

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 22-cv-22671-CMA

DELIO BATISTA, CARLOS LOPEZ, Miami, Florida
MARIANA LOPEZ and RAFAELA
VALIENTE,

July 11, 2023

Plaintiffs,

8:24 a.m. to 6:09 p.m.

vs.

Courtroom 13-3

AVANT ASSURANCE, INC.,
REINIER CORTES and ANDREA
GONZALEZ QUINTERO,

(Pages 1 to 206)

Defendants.

JURY TRIAL - DAY 2
BEFORE THE HONORABLE CECILIA M. ALTONAGA,
CHIEF UNITED STATES DISTRICT JUDGE

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I N D E X

WITNESSES

WITNESSES FOR THE PLAINTIFFS:

Page

Alix Ledesma

Direct Examination by Mr. Cummings	5
Cross-examination by Mr. Tropp	33
Redirect examination by Mr. Cummings	50
Recross Examination by Mr. Tropp	54

Mariana Lopez Alcala

Direct Examination by Mr. Pollock	56
Cross-examination by Mr. Tropp	101
Redirect Examination by Mr. Pollock	120

Rafaela Valiente

Direct Examination by Mr. Cummings	121
Cross-Examination by Mr. Tropp	170

WITNESSES FOR THE DEFENDANTS:

Page

--

EXHIBITS IN EVIDENCE

IDENTIFIED

ADMITTED

Defendants' Exhibit No.	--	--
Plaintiffs' Exhibit No. 3	92	--
Composite Exhibit No. 4	19	--
Plaintiffs' Exhibit No. 4	60	--
Composite Exhibit No. 7	24	--
Composite Exhibit No. 13	139	--
Plaintiffs' Exhibit No. 20	132	--

MISCELLANEOUS

Page

Proceedings.....	4
Court Reporter's Certificate.....	185

(The following proceedings were held at 8:24 a.m.)

COURT SECURITY OFFICER: All rise.

THE COURT: Good morning. You may be seated. You are aware that our one juror has not come. Are we ready to proceed without him?

MR. POLLOCK: Ready, Your Honor.

MR. CUETO: Ready, Your Honor.

MR. TROPP: Yes, Judge.

THE COURT: All right. Let's bring the jury in.

COURT SECURITY OFFICER: All rise for the jury, please.

THE COURT: Who is your next witness?

MR. POLLOCK: Alix Ledesma.

THE COURT: Bring him *[sic]* up, please.

(The jury entered the courtroom at 8:25 a.m.)

THE COURT: Good morning, ladies and gentlemen. My apologies for keeping you waiting. Please be seated.

To the witness, please raise your right hand.

(Time 8:26 a.m.)

ALIX LEDESMA,
a witness for the Plaintiff, testified as follows:

THE WITNESS: Yes, I swear.

THE COURT: Please be seated. And our interpreter needs a microphone.

DIRECT EXAMINATION

BY MR. CUMMINGS:

Q. Good morning, Mrs. Ledesma.

A. Good morning.

Q. Could you please state your name?

A. Alice [sic] Ledesma.

Q. And you were the call center manager at Avant, correct?

A. I am.

Q. In fact, you were the senior call center manager; is that right?

A. That is correct.

Q. And the call center is where Avant's insurance agents makes sales?

THE INTERPRETER: I'm sorry, Counsel, I am having difficulty hearing you.

BY MR. CUMMINGS:

Q. The call center is where Avant's insurance agents sell health insurance?

A. Yes.

Q. You became the call center manager in May of 2022?

A. Yes.

Q. And that was right before Avant moved its offices from Kendall to Doral?

A. Yes.

Q. And the office in Doral is much bigger than the office in

1 Kendall, correct?

2 A. Correct.

3 Q. The Kendall office had about -- space for about -- I'm
4 sorry.

5 The Kendall call center had space for about eight to ten
6 insurance agents?

7 A. Yes.

8 Q. But the Doral office has space for about 40 insurance
9 agents?

10 THE INTERPRETER: I'm sorry, Counsel?

11 BY CUMMINGS:

12 Q. The Doral office -- or the Doral call center has space for
13 about 40 insurance agents to work?

14 A. Or less.

15 Q. Okay. And those work spaces where the insurance agents are
16 in Doral, are desks separated by glass?

17 A. Yes.

18 Q. And there are currently 21 insurance agents working for
19 Avant right now?

20 A. Yes.

21 Q. And you manage all 21 of those insurance agents?

22 A. Yes.

23 Q. And the glass dividers allow you to see what all of them
24 are doing while they work?

25 A. Not necessarily.

1 Q. Well, your job is to make sure that the insurance agents
2 are doing their work correctly?

3 A. Yes.

4 Q. And the glass is transparent, correct?

5 A. No.

6 Q. Is it tinted?

7 A. It isn't transparent, but it isn't black either. It's like
8 a beige color.

9 Q. Can you see through the glass?

10 A. No.

11 Q. You cannot see through the glass, okay.

12 Now, another part of your job is to hire insurance agents
13 for Avant, correct?

14 A. Well, right now, yes.

15 Q. And another part of your job is to train those insurance
16 agents?

17 A. Within our system, yes.

18 Q. What do you mean by "within our system"?

19 A. That they need to learn how to use the system that we use
20 in our job.

21 Q. Systems specific to Avant?

22 A. Correct.

23 Q. Okay. Could you be more specific about what those types of
24 systems are?

25 A. Well, for example, I have to train agents on how to quote a

1 policy.

2 Q. What else?

3 A. And teach them how to handle clients within the system.

4 Q. And when you refer to "the system," are you referring to
5 the CRM?

6 A. Yes.

7 Q. Is that a system also known as "Radius Bob," B-O-B?

8 A. I don't know.

9 Q. But the CRM is where the list of Avant's clients are
10 maintained, it's a database?

11 A. Yes.

12 Q. Now, you haven't always been the call center manager at
13 Avant, correct?

14 A. Correct.

15 Q. In fact, you started as an insurance agent yourself?

16 A. I started as an insurance agent working part time.

17 Q. And you were paid as a 1099 worker when you were an
18 insurance agent at Avant?

19 A. That is correct.

20 Q. But now you get paid as a W-2 employee?

21 A. Yes.

22 Q. And you switched from being a 1099 worker to a W-2 employee
23 around the same time that you became the call center manager?

24 A. That's correct.

25 Q. And Reinier asked you to make that switch so that you could

1 have benefits?

2 A. Yes.

3 Q. Okay. So now you have health insurance through Avant?

4 A. Yes.

5 Q. And you also have a retirement plan through Avant?

6 A. Yes.

7 Q. You first met Mr. Cortes in 2020?

8 A. October of 2020.

9 Q. And in October of 2020, you were interviewed by Mr. Cortes
10 to work as an insurance agent, correct?

11 A. Correct.

12 Q. That was back in the Kendall office?

13 A. Yes.

14 Q. And Mr. Cortes hired you on the spot?

15 A. Yes. He explained to me what the job consisted of and I
16 accepted it.

17 Q. And you didn't --

18 THE COURT REPORTER: I'm sorry, begin the question
19 again, slower.

20 BY MR. CUMMINGS:

21 Q. You did not sign a written contract when you started
22 working at Avant?

23 A. No, I did not.

24 Q. And Mr. Cortes trained you how to be an insurance agent at
25 Avant?

1 A. Yes.

2 Q. Similar to the way you train the insurance agents now?

3 A. Yes.

4 Q. And he showed you how to sell health insurance through the
5 federal government's marketplace?

6 A. Yes.

7 Q. Now, when you were working as an insurance agent, you used
8 a computer to sell health insurance at Avant?

9 A. Yes.

10 Q. And you did not -- that computer was owned by Avant,
11 correct?

12 A. Well, when I was at the office, I would use Avant's
13 computer, but sometimes when at home, I would be able to log in
14 from my computer at home.

15 Q. When you say you were at home logging in to your computer,
16 was it because you were working from home?

17 A. Yes.

18 Q. And that's because Mr. Cortes allowed you to work from
19 home?

20 A. That is correct.

21 Q. Now, the computer at the Kendall office had the CRM
22 software on it, correct?

23 A. Yes.

24 Q. And you didn't have to pay to use that CRM -- you didn't
25 have to pay Avant to use that software?

1 A. No.

2 Q. And you don't have to pay a subscription to use the CRM
3 either?

4 A. I did not.

5 Q. No -- no monthly fee that you had to pay?

6 A. No.

7 Q. And no annual fee that you had to pay in terms of the CRM?

8 A. No.

9 Q. Now, Avant also provided you with leads, right?

10 A. Yes.

11 Q. And leads are potential customers that you have to try to
12 sell health insurance to?

13 A. Yes.

14 Q. You didn't pay for those leads, right?

15 A. No.

16 Q. Those leads come from a company in Colombia?

17 A. Yes.

18 Q. So the phone would ring in the office and then a potential
19 customer would be on the other line already?

20 A. Correct.

21 Q. And the phone that you used was provided by Avant as well?

22 A. Correct.

23 Q. And you never used your cellular phone to sell insurance at
24 Avant, correct?

25 A. No.

1 Q. And since the day that you started working at Avant as an
2 insurance agent, you have been using the same CRM software?

3 A. Yes.

4 Q. And even when you worked from home on your own computer,
5 you were using the CRM software?

6 A. Yes.

7 Q. The software provided by Avant?

8 A. Yes.

9 Q. And as an insurance agent, you logged into that CRM
10 software every day, right?

11 THE INTERPRETER: Sorry, Counsel, can I get that
12 question again?

13 MR. CUMMINGS: No problem.

14 BY MR. CUMMINGS:

15 Q. As an insurance agent, when you were still working as an
16 insurance agent, you had to log into the CRM software every
17 day?

18 A. Yes, each person has their own credentials.

19 Q. But you are not sure if the software is called Radius Bob?

20 A. I've just always known it as CRM.

21 Q. So it is not that it isn't called Radius Bob, you are just
22 not sure?

23 A. Correct.

24 Q. Now, all of the insurance agents that currently work at
25 Avant are W-2 employees, right?

1 A. Correct.

2 Q. And all 21 of those insurance agents use the CRM to do
3 their work?

4 A. Yes.

5 Q. And all 21 of those insurance agents that you manage still
6 get leads from Colombia?

7 A. Yes.

8 Q. Those insurance agents that you manage now cannot work from
9 home though, correct?

10 A. They cannot do that currently.

11 Q. You mentioned that you were able to work from home; is that
12 before when you were an insurance agent, or is that now as a
13 call center manager?

14 A. Before I was able to access the CRM, and currently I cannot
15 access it from home.

16 Q. Why is that?

17 A. Because you have to access it from the Doral office.

18 Q. Who said that you have to access it from the Doral office?

19 A. Those are the current company policies right now.

20 Q. And those company policies are made by Reinier Cortes?

21 A. Yes.

22 Q. Now, when you were still an insurance agent, were you
23 working from home at one point because you contracted the COVID
24 virus?

25 A. Yes, that happened too.

1 Q. And you told Reinier Cortes that you had COVID?

2 A. Yes.

3 Q. And he allowed you to work from home by giving you access
4 to the CRM on your computer at home?

5 A. Yes, but also, I was a part-time worker, so the two or
6 three hours that I would work part time, I would also work
7 those from home.

8 Q. If Mr. Cortes told you that you could not work from home
9 while you were an independent contractor, would you still --
10 would you have still worked from home?

11 A. Well, if he would have said that I could not, I would have
12 gone to the office.

13 Q. And that's because Mr. Cortes is your boss, correct?

14 A. Well, right now he's my boss.

15 Q. Now, getting back to the 21 insurance agents that you
16 managed. They don't all work on the same shifts now, right?

17 A. They do not all work on the same shifts.

18 Q. You create a schedule for the shifts that they will work?

19 A. They choose their shifts, and those are the shifts that
20 they work during that given week.

21 Q. Now, the insurance agents are able to choose their shifts
22 now?

23 A. That's always been the case.

24 Q. And some agents start working at 9 o'clock in the morning?

25 A. That is correct.

1 Q. And some agents start later in the afternoon, correct?

2 A. That is correct.

3 Q. Some at 12:00 in the afternoon?

4 A. Correct.

5 Q. Some come in as late as 1:30 in the afternoon?

6 A. Correct.

7 Q. And you create a schedule after they tell you what time
8 they want to work?

9 A. Yes, I create a graph or a table.

10 Q. And the times or the shifts that the insurance agents work
11 are staggered so there would always be coverage on the call
12 center floor?

13 A. Correct.

14 Q. And Avant -- the Avant office in Doral is currently open
15 from 9 a.m. in the morning to 8 p.m. at night?

16 A. Correct.

17 Q. But none of those 21 insurance agents that you manage work
18 from 9 a.m. to 8 p.m., right?

19 A. They do not.

20 Q. And all 21 of the insurance agents can't choose to start at
21 9 a.m., right?

22 All 21 of the insurance agents that you manage cannot
23 choose to start working at 9 a.m.?

24 A. I don't understand that question.

25 Q. Well, what if -- you said you ask the insurance agents what

1 time they want to work, correct?

2 A. Yes.

3 Q. And it's your testimony that you just take these times and
4 put them on the schedule?

5 A. Yes.

6 Q. Okay. So what if all 21 of the insurance agents said, We
7 all want to start working at 9 a.m., would that be possible?

8 A. Right now it would not be possible.

9 Q. Because if they all started working at 9 a.m., then they
10 could not all work until 8 p.m., correct?

11 A. Correct.

12 Q. Because --

13 A. That's why each one selects their shifts.

14 Q. Because then they would be working more than 40 hours per
15 week?

16 A. Yes, or 30, depending on the agent.

17 Q. Well, I'm asking a different question. If every insurance
18 agent -- or if one of the insurance agents that you managed
19 worked from 9 a.m. to 8 p.m., Monday through Friday, they would
20 be working more than 40 hours a week, correct?

21 A. Yes.

22 Q. And Avant is not paying its W-2 employees overtime,
23 correct?

24 A. No. It's not necessary.

25 Q. Now, you remember that we spoke before meeting in the

1 courtroom today, correct?

2 A. Yes.

3 Q. And I actually conducted a deposition of you about a month
4 ago, on June 9th; do you remember that?

5 A. Yes.

6 Q. And at the beginning of that deposition, I instructed you
7 that you were providing testimony just like you would be
8 providing if you were in a courtroom; do you remember?

9 A. Yes.

10 Q. And for that reason, it was important that you tell the
11 truth at that deposition; do you remember?

12 A. Yes.

13 Q. And you did tell the truth at that deposition, correct?

14 A. Yes.

15 Q. So a moment ago I asked you whether or not you created the
16 insurance -- I'm sorry, whether you created the work schedules
17 for the Avant agents, and your testimony is that -- your
18 testimony today is that you don't create the schedule, the
19 agents tell you what time they want to work, right?

20 A. And I said the same thing during deposition.

21 Q. Well, let's see what you said. So on Page 47 of your
22 deposition at Line 22 I asked you:

23 "What determines what time insurance agents will come
24 -- or who determines what time insurance agents will come and
25 start work?"

1 "ANSWER: I do.

2 "QUESTION: Do you create a schedule for the 21
3 insurance agents that currently work there?

4 "ANSWER: Yes."

5 A. I'm the one that makes the chart so that everyone knows at
6 what time they are coming in.

7 MR. CUMMINGS: I am going to object to nonresponsive.
8 There is no question pending, Your Honor.

9 THE COURT: Finish the translation, please.

10 THE WITNESS: But they are the ones that choose what
11 shift they want.

12 MR. CUMMINGS: Your Honor, I am going to object to
13 nonresponsive, there is no question pending and ask that that
14 last response be stricken from the record.

15 THE COURT: Denied.

16 BY MR. CUMMINGS:

17 Q. On June 9th, 2023, you didn't give me the response that you
18 just told the jury now, correct?

19 A. I think I did.

20 Q. Would looking at this deposition refresh your recollection?

21 A. Okay.

22 Q. You remember that -- and so since you were sworn in under
23 oath to tell the truth on June 9th during your deposition, you
24 were telling the truth then, correct?

25 A. Can you repeat the question?

1 Q. Right. You were telling the truth back on June 9th when I
2 took your deposition?

3 A. Yes.

4 Q. A month ago?

5 A. Yes.

6 Q. And you took an oath to tell the truth here today, correct?

7 A. That's correct.

8 Q. So should the jury believe what you said a month ago or
9 should the jury believe what you are saying now?

10 A. I think I said the same thing.

11 Q. Now, your e-mail address at work is Alix, A-L-I-X,
12 @AvantAssurance.com?

13 A. Yes.

14 Q. And currently, insurance agents need to let you know if
15 they have to take time off of work when they are scheduled,
16 right?

17 A. Correct.

18 Q. And the insurance agents have to let you know if they are
19 going to be late to work, right?

20 A. Correct.

21 Q. Now, Ms. Ledesma, I am showing you Composite Exhibit 4,
22 which is a set of e-mails that have already been marked into
23 evidence.

24 (Composite Exhibit No. 4 was identified.)

25

1 BY MR. CUMMINGS:

2 Q. You have confirmed that your e-mail is
3 Alix@AvantAssurance.com, correct?

4 A. Correct.

5 Q. And this is an e-mail that you wrote on June 15, 2022, in
6 the highlighted part, correct?

7 A. Correct.

8 (Pause in proceedings.)

9 BY CUMMINGS:

10 Q. Okay. Thank you for bearing with me, but, Ms. Ledesma, I
11 am now showing you that same e-mail, just in a different
12 format. Do you agree that this is an e-mail that you wrote on
13 June 15th, 2022?

14 A. Yes.

15 Q. And at that time, you were already the call center manager
16 for Avant, right?

17 A. Correct.

18 Q. Now, as the call center manager, you supervised the
19 Plaintiffs in this case?

20 A. They were independent agents.

21 Q. Okay. But my question was, when you were the call center
22 manager, they were working under you at the Doral office,
23 correct?

24 A. Well, I was -- I was the manager of the call center and
25 they were independent agents.

1 Q. And as the manager of the call center, your job is to
2 manage?

3 A. Yes.

4 Q. And so you were managing my Plaintiffs who were being paid
5 as independent contractors at the time?

6 A. Yes.

7 Q. And this e-mail that we are looking at on the screen is
8 addressed to some of my clients and other insurance agents that
9 worked at Avant at the time, right?

10 A. Correct.

11 Q. Now, I was able to have an official Spanish translation of
12 this e-mail made, so I am going to read it in English. And
13 what I am showing you now is also a part of Composite Exhibit
14 4, it is already marked.

15 (Pause in proceedings.)

16 BY MR. CUMMINGS:

17 Q. Okay. And so the text of that e-mail says, "Good
18 afternoon. As you know, there have been changes in the office
19 and from now on it is requested that any communication
20 regarding requests for time off or late arrivals to the office
21 be made by e-mail to my e-mail address, Alix@AvantAssurance.com
22 and copied to Jennifer Manjarres, office manager, to her
23 e-mail, JManjarres@AvantAssurance.com. This is in order to
24 keep the agents' shifts covered. Thank you for your
25 understanding."

1 And that would be an accurate translation in English of the
2 e-mail you wrote on June 15th to my clients?

3 A. Well, here it says that it's required, and in the e-mail
4 that I wrote, it didn't say that it was required. It was a
5 request that it be done, please.

6 THE COURT: How much longer with this witness, more or
7 less?

8 MR. CUMMINGS: Maybe 20 or 30 minutes.

9 THE COURT: All right. We will take a break now.

10 Ladies and gentlemen, we will take a brief morning
11 recess. Please don't discuss the case.

12 COURT SECURITY OFFICER: All rise.

13 (The jury exited the courtroom at 9:04 a.m.)

14 THE COURT: Please don't discuss your testimony during
15 the break. You may step outside if you like. Thank you.

16 (Witness temporarily excused.)

17 (A recess was taken from 9:04 a.m. to 9:26 a.m.)

18 THE COURT: Let's bring the jury back, please.

19 (The jury entered the courtroom at 9:26 a.m.)

20 THE COURT: Please seated.

21 (Pause in proceedings.)

22 THE COURT: Please proceed.

23 DIRECT EXAMINATION (Cont'd.)

24 BY MR. CUMMINGS:

25 Q. Ms. Ledesma, when we left off, we were discussing the

1 e-mail you see on the screen there, and I believe the last
2 thing that you said was that there was a word here that you
3 disputed. You said that you were requesting the agents at the
4 time to tell you if they were taking off or if they would be
5 late?

6 A. Correct. It was a request as a favor, as a matter of
7 courtesy.

8 Q. Okay. But the purpose of this e-mail was to advise the
9 insurance agents at that time to tell you when they want to
10 take off or when they would come late, right?

11 A. Yes. I mean, they would always inform me by WhatsApp, but
12 now I wanted to it to be done by e-mail.

13 Q. And you needed to make sure that the call center had floor
14 coverage at all times, right?

15 A. Correct.

16 Q. You didn't want a situation where there was no insurance
17 agents on the call floor to take the incoming leads?

18 A. Correct.

19 Q. And my client Carlos Lopez complained when he received that
20 e-mail, right?

21 A. Yes.

22 Q. And Mariana Lopez complained also when she received that
23 e-mail?

24 A. Correct.

25 Q. Now, Ms. Ledesma, before you sent that e-mail to my clients

1 on June 15th, 2022, you had already been creating work
2 schedules for the insurance agents at Avant, right?

3 A. Correct.

4 Q. And I am going show you what has been previously marked as
5 Composite Exhibit No. 7.

6 (Composite Exhibit No. 7 was identified.)

7 BY MR. CUMMINGS:

8 Q. This is a schedule that you created, correct?

9 A. Correct.

10 Q. And you created this schedule after becoming the call
11 center manager?

12 A. Yes.

13 Q. And when we look on the left-hand side, we see names. That
14 first name, Ana M, that stands for Ana Monge, M-O-N-G-E?

15 A. Yes.

16 Q. And Mariana L, that stands for my client, Mariana Lopez?

17 A. Yes.

18 Q. And Delio B is Delio Batista?

19 A. Yes.

20 Q. And Carlos L is Carlos Lopez?

21 A. Yes.

22 Q. Rafaela V is Rafaela Valiente?

23 A. Yes.

24 Q. And Katrina G is Katrina Guerra?

25 A. Yes.

1 Q. And Alix L is yourself, Alix Ledesma?

2 A. Correct.

3 Q. These were all actively producing insurance agents at the
4 time?

5 A. Yes.

6 Q. And as you previously mentioned, this -- this schedule was
7 created so there would be coverage on the call center floor at
8 all times?

9 A. Correct.

10 Q. Now, you created the schedule at Avant before any insurance
11 agents became employees?

12 A. Yes.

13 Q. Just like you create the schedules of the insurance agents
14 that are employees at Avant now?

15 A. Yes.

16 (Pause in proceedings.)

17 BY CUMMINGS:

18 Q. And the schedule that I just showed you from May 9th, 2022,
19 to May 13th, 2022, that's not the only schedule that you
20 created, correct?

21 A. Correct.

22 Q. And in fact, you sent these schedules out on a weekly basis
23 to the insurance agents, right?

24 A. Correct.

25 Q. And so here, we see another schedule that you would send

1 out to the insurance agents, and this one is dated May 23rd,
2 2022, to May 27th, 2022, right?

3 A. Correct.

4 Q. And here is another schedule you created from May 30th to
5 June 3rd, right?

6 A. Correct.

7 Q. And another one from June 6th to June 10th?

8 A. Yes.

9 Q. Okay. So this was just a weekly practice, correct?

10 A. Yes.

11 Q. Now, you know who Ms. Andrea Quintero is, correct?

12 A. Yes.

13 Q. And she is the vice president at Avant?

14 A. Yes.

15 Q. And her job is to handle the processing of insurance
16 policies at Avant?

17 A. No.

18 Q. What is her job?

19 A. Well, in my point of view, what I think Andrea does, is she
20 manages the processing section, but she doesn't process the
21 policies herself.

22 Q. So she -- when you say she manages the processing section,
23 please be a little bit more clear for the jury so they
24 understand what you mean.

25 A. Well, when a policy is sold, you have to put it into the

1 system, and that part of putting it into the system, that's
2 what she handles.

3 Q. So after an insurance agent sells a policy, then
4 Ms. Quintero's job is to come in on the back end and process
5 some part of that transaction?

6 A. No, she does not process the policies. There's other
7 people that process the policies, but she's the one that
8 handles that section.

9 Q. Are you saying that she manages the people who do the
10 processing?

11 A. You could say so.

12 Q. And Ms. Quintero knows that you are the call center manager
13 at Avant, correct?

14 A. Yes.

15 Q. And you commit -- you communicate with Ms. Quintero from
16 time to time if there is an issue processing an insurance
17 policy?

18 A. From time to time, yes.

19 Q. So, for example, she may need to help you process a policy
20 where a client has an immigration issue?

21 A. Like, I would consult her. It is more of a consultation
22 rather than her -- having her do something for me.

23 Q. And you consult with her for her expertise in the
24 processing?

25 A. Yes, correct.

1 Q. When you were still working as an insurance agent before
2 May 2022, you were paid by commissions, correct?

3 A. Correct.

4 Q. And you worked during the 2020 -- or let me say the 2020 to
5 2021 open enrollment period?

6 A. Yes.

7 Q. During that first open enrollment period, you kept track of
8 every policy that you sold on a Google sheet, right?

9 A. Correct.

10 Q. And Reinier Cortes provided that Google sheet for you to
11 use?

12 A. Yes.

13 Q. And he told you to record every policy that you sold on
14 that Google sheet, right?

15 A. Correct.

16 Q. Now, this was one Google spreadsheet, but it had different
17 columns for every insurance company that you sold for?

18 A. Correct.

19 Q. And you did record every policy that you sold on that
20 Google sheet, right?

21 A. Correct.

22 Q. And that Google sheet was shared with Reinier Cortes?

23 A. Yes.

24 Q. So he had access to it?

25 A. Yes.

1 Q. And at that time, the Google sheet was also shared with
2 other insurance agents at Avant, right?

3 A. Yes.

4 Q. So you had the ability to see sales that other insurance
5 agents made through the shared Google Sheets?

6 A. Yes.

7 Q. And any commissions that you earned during the open
8 enrollment period were paid later in 2021, right?

9 A. Yes.

10 Q. So, for example, you know, if the open enrollment period in
11 2021 ended in January 2021, you didn't receive any commissions
12 until maybe later in February or March, right?

13 A. Correct.

14 Q. And you're not sure if you were paid a commission for every
15 member that registered -- registered through your sales
16 efforts?

17 A. Well, they would send me a statement with all of the
18 policies that I was getting paid for.

19 Q. Right. And when you say they sent you a statement, who are
20 you referring to?

21 A. The accounting department.

22 Q. Accounting department at Avant?

23 A. Yes.

24 Q. And you would literally receive an e-mail that -- from an
25 address that said accounting@AvantAssurance.com, right?

1 A. I don't recall the actual e-mail address, per se, but it
2 did read accounting department.

3 Q. Now, you're saying that you are sure that you were paid a
4 commission for every member that you had on your Google sheet?

5 A. No. I'm saying -- no. I'm saying that they would send me
6 a statement with the members that I was getting paid for.

7 Q. So on one hand, you have a Google sheet where you recorded
8 every policy that you sold during an open enrollment period,
9 right?

10 A. Yes.

11 Q. And then on the other hand, you receive a commission
12 statement from the accounting department at Avant showing you
13 how many policies you were being paid for?

14 A. Correct.

15 Q. For sales that you made during the open enrollment period?

16 A. Yes.

17 Q. Okay. And so my question to you is, are you sure that you
18 were paid for every member that you sold on that Google sheet
19 when you received your commission statement?

20 A. I am not sure. I never checked.

21 Q. But you could have checked the commissions you received
22 against the Google sheet that you recorded -- where you
23 recorded all your sales, right?

24 A. Yes.

25 Q. And you want all the money that you earned for your sales

1 efforts, right?

2 A. Of course.

3 Q. But you never checked to see if the commissions that you
4 were being paid matched the Google sheet where -- I'm sorry.

5 You never checked to see if the commission statement
6 matched the Google sheet where you recorded your policies sold,
7 right?

8 A. I never checked member by member, person by person, but I
9 did have a general calculation of more or less what the amount
10 was supposed to be, and that was the amount that I received in
11 the bank.

12 Q. And you just -- you assumed that Reinier Cortes was paying
13 you correctly, right?

14 A. Yes.

15 Q. And then after the open enrollment period, you continued
16 selling policies on a commission basis?

17 A. Yes.

18 Q. From February 2021 to October 2021?

19 A. Yes.

20 Q. And you still kept track of your sales on that Google
21 sheet?

22 A. Yes, but later on it switched. It was still a spreadsheet
23 but it was for each person.

24 Q. However, your --

25 THE INTERPRETER: That's correct, the interpreter

1 repeated the translation.

2 BY MR. CUMMINGS:

3 Q. So what you are saying is that the spreadsheet was not
4 shared with other insurance agents at that time; is that right?

5 A. It was not. Each agent had their own spreadsheet.

6 Q. But your spreadsheet was still being shared with Reinier
7 Cortes?

8 A. Correct.

9 Q. And you would receive commission statements through e-mail
10 from Avant's accounting department, right?

11 A. Yes.

12 Q. And that commission statement had a list of the policies
13 you sold?

14 A. Yes.

15 Q. The statement included the name of the member, right?

16 A. Correct.

17 Q. The member's phone number?

18 A. I don't remember the phone number being there.

19 Q. Is it possible that a phone number could have been in
20 there?

21 A. I don't remember.

22 Q. But it did show the total members that you sold for each
23 insurance company, this commission statement?

24 A. It was a -- one statement for each insurance company.

25 Q. And the Google sheet that you kept had each policy you sold

1 for each insurance company after the open enrollment period,
2 right?

3 A. Yes, correct.

4 Q. But, again, you never checked your commission statements
5 against the Google sheet?

6 A. I did not.

7 Q. Because you assumed that Avant was paying you correctly?

8 A. Yes, because -- and I'll repeat. I did have a general idea
9 of what the amount was that I was supposed to receive. So if I
10 did receive that amount, I had no reason to check. I did not
11 check.

12 MR. CUMMINGS: No further questions at this time.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. TROPP:

16 Q. Hi, Alexa [sic]. How are you?

17 A. Good, thank you.

18 Q. Can you hear me okay?

19 A. Yes.

20 Q. Okay. So you have experience working at Avant as an
21 independent contractor and as an employee, right?

22 A. That's correct.

23 Q. Do you know the difference?

24 A. Yes.

25 Q. And we spent a lot of time talking about how employees or

1 independent contractors are treated after the Plaintiffs left.

2 I want to talk about how the -- how the contractors or
3 employees were treated while they were there.

4 A. Okay.

5 Q. That's what really matters.

6 THE INTERPRETER: I'm sorry, the interpreter wants to
7 get the last part of the question again. I think I may have --

8 MR. TROPP: That's what really matters.

9 THE INTERPRETER: The part of the question, I may have
10 mistranslated it. Sorry, Your Honor.

11 MR. CUMMINGS: Objection, Your Honor, counsel
12 testified.

13 THE INTERPRETER: How they are treated before?

14 MR. TROPP: I want to talk about how Plaintiffs were
15 treated before they left and while they were working there.

16 THE WITNESS: Okay.

17 BY MR. TROPP:

18 Q. Because they are not asking for wages after they left.

19 A. Okay.

20 Q. And -- and before we do that, before you worked at Avant,
21 you worked for a staffing company?

22 A. Yes.

23 Q. And were you a W-2 employee?

24 A. Yes.

25 Q. And when you -- you worked -- what was your job -- what did

1 you do at the staffing company?

2 A. The name of the company I was working for was called Career
3 Source, and I was assistant -- assistant of -- I don't recall
4 right now the name of the position itself.

5 Q. Okay.

6 A. Well, what I would do is that when people would come over,
7 clients would come over, I would help them find a job; get
8 Medicare, Medicaid; help them out with their food stamps; fill
9 out the application forms.

10 Q. All right.

11 A. I help them fill out their résumés.

12 Q. Okay. But you were at that time an employee?

13 MR. CUMMINGS: Objection, relevance.

14 THE WITNESS: Yes.

15 BY MR. TROPP:

16 Q. You had to show up at a certain time?

17 MR. CUMMINGS: Objection, relevance.

18 THE COURT: Overruled.

19 BY MR. TROPP:

20 Q. You had -- an employer told you what to do and you had to
21 do it or you would be fired, right?

22 A. Yes.

23 Q. You had to show up at a certain time?

24 A. Yes.

25 Q. They had control over you?

1 A. Yes.

2 MR. CUMMINGS: Objection to relevance, Your Honor.

3 THE COURT: Overruled.

4 BY MR. TROPP:

5 Q. And -- okay. So at some point, you become a sales agent,
6 correct, for Avant?

7 A. Yes.

8 Q. Were you an independent contractor while working as a sales
9 agent when you started?

10 A. Yes, I would -- I considered myself to be one.

11 Q. Just like the Plaintiffs?

12 A. Yes.

13 Q. Did you all --

14 MR. CUMMINGS: Objection.

15 THE COURT: Overruled.

16 BY MR. TROPP:

17 Q. Did you all consider yourselves as independent contractors?

18 MR. CUMMINGS: Objection.

19 THE COURT: Sustained.

20 BY MR. TROPP:

21 Q. Why did you consider yourself an independent contractor?

22 MR. CUMMINGS: Objection, foundation.

23 THE COURT: Overruled.

24 THE WITNESS: Because it was something I would do

25 after my full-time job. It was something -- a job wherein I

1 was using my license. And it was some -- it was a job that I
2 could do on the days that I was available.

3 BY MR. TROPP:

4 Q. Did you have more freedom?

5 A. Well, if you have two jobs, a full-time job and then you
6 are also working in the afternoon.

7 Q. You were doing both?

8 A. Yes.

9 Q. Did you have more freedom as an independent contractor
10 working for Avant?

11 A. Yes.

12 Q. How?

13 A. Because I would choose -- I could choose what days I wanted
14 to work. I would choose to work every day, but that's because
15 I needed the work.

16 Q. Did you have the opportunity to decide if you want to make
17 more money or less money by how much hours you work?

18 A. Sure. But I would work eight hours at a full-time job, and
19 after my full-time job, I would connect or log in to work in
20 the insurance thing.

21 Q. Right. That's what I want -- that's the questions I want
22 to ask you about, the work you did for Avant.

23 And you said you got to choose your schedule?

24 A. I would choose the days I would work, yes.

25 Q. Now, let's say one day you just decided, and I am talking

1 about the work for Avant, and you only wanted to work three
2 hours; would that be okay?

3 A. Yes.

4 Q. Would anyone say, No, you need to come in for more hours?

5 A. No.

6 Q. And what if you didn't want to show up one day for work;
7 would that be okay, I am talking about for Avant?

8 A. Yes.

9 Q. Would you say all the independent contractors had that same
10 type of freedom?

11 A. Yes.

12 Q. And when -- there was a period where you would work signing
13 up policies with the Plaintiffs?

14 A. Yes.

15 Q. You considered yourself a colleague of them -- of theirs,
16 you were an agent just like them?

17 A. Yes.

18 (Pause in proceedings.)

19 BY MR. TROPP:

20 Q. So this is a schedule for 5/9, Alix; do you see this?

21 A. Yes.

22 Q. And then you see where it says, Carlos off and off?

23 A. Yes.

24 Q. And would he request that, or would that be requested from
25 one of the agents?

1 A. Well, they would choose the schedule and choose what days
2 they wanted to work.

3 Q. Okay. How about here, "Rafaela off on Monday, Carlos off,"
4 they would choose that? Did you put together the schedule
5 based on what they would choose like that?

6 A. Correct.

7 Q. That's from May 30th?

8 A. Uh-huh.

9 Q. And then Mariana also wanted the day off?

10 A. Yes.

11 Q. And then...

12 (Pause in proceedings.)

13 BY MR. TROPP:

14 Q. Okay. This is June 13th, June 17th. And here, Delio took
15 a couple days off?

16 A. Yes.

17 Q. And all the other hours are -- were for six-hour shifts?

18 A. Yes.

19 Q. And all these schedules are Lunes, that's Monday through
20 Friday?

21 A. Yes.

22 Q. Because you didn't work weekends?

23 A. No.

24 Q. So these schedules all show six hours a day, five days a
25 week?

1 A. Yes.

2 (Pause in proceedings.)

3 BY MR. TROPP:

4 Q. We've got one on June 4th. What's going on here? Everyone
5 here took the Monday off?

6 MR. CUMMINGS: Objection, mischaracterization of the
7 evidence.

8 THE COURT: Overruled.

9 MR. CUMMINGS: July 4th. I believe Mr. Tropp said
10 June 4th.

11 THE WITNESS: The office was closed on the 4th of
12 July.

13 BY MR. TROPP:

14 Q. Oh, okay. All right.

15 A. When the office isn't open, we don't go.

16 Q. All right. And then on -- on -- Katrina took -- what
17 happened, she didn't come in on Tuesday?

18 A. That's correct.

19 Q. Now, you said that you would put these schedules together
20 with the agents. Was it because it was a forced schedule or
21 was it -- what was the purpose of these schedules?

22 A. No, it wasn't a forced schedule. It wasn't forced. It
23 wasn't a forced schedule. Each person would say what days they
24 wanted to work and what hours within that day. And if there
25 was -- if there was any problem, some issue wherein they

1 couldn't work, they would just simply say so or they would have
2 to arrive late or something.

3 Q. There was an interest, would you agree, that there would be
4 people on the floor or people that needed to be taken care of,
5 and the idea was to make sure that agents were there to take
6 care of customers?

7 A. Of course.

8 Q. And would you agree that these schedules were made as a
9 form of courtesy with each other and courtesy amongst the
10 agents?

11 A. Yes.

12 Q. Okay. Let me show you another e-mail real quick.

13 Also, do you know around the time that Carlos stopped
14 working, that he stopped being an agent for Avant?

15 A. Like around June of last year.

16 Q. That's when all the changes started? Around that time?

17 A. After.

18 Q. After he left. Okay.

19 Here's an e-mail right around the time we --

20 MR. CUMMINGS: Counsel, please identify that exhibit.

21 MR. TROPP: It's one of yours, on your e-mail.

22 MR. POLLOCK: Right. We understand. We just want to
23 have it for the record so we can all understand. Which exhibit
24 number is that, please?

25 MR. TROPP: I'm not sure if you numbered it, but it is

1 under the Plaintiffs' exhibits under e-mails. All right?

2 BY MR. TROPP:

3 Q. I don't know if you can see this, but it says -- this is
4 Mariana around August of 2022, sent to you saying that she
5 needs some time off for surgery.

6 Do you see that?

7 A. Uh-huh, yes.

8 Q. It was around the same times that you were talking about
9 those changes to the office; yes?

10 A. Yes.

11 Q. Who -- at the top it says Mariana Lopez. This isn't -- and
12 then who is that sent to, can you tell?

13 THE INTERPRETER: I'm sorry, Counsel, what was the
14 question again?

15 BY MR. TROPP:

16 Q. At the top of the e-mail, it says from Mariana Lopez and it
17 is sent to somewhere; who is it sent to?

18 A. It says Jorge Tamayo.

19 Q. And Jorge@?

20 A. Jorge@fairlawattorney.com.

21 Q. That's lawyers for the Plaintiffs?

22 A. I don't know.

23 Q. So there -- there in this e-mail, Mariana is telling you
24 she is not able to show up to the office?

25 A. Well, yes, it is not really -- the print is not really that

1 clear, but yeah.

2 Q. All right.

3 How long have you been working for Avant?

4 A. Three years.

5 Q. Would you agree that all the commissions that you made,
6 that the bonuses that you made you were paid, all of them?

7 A. Yes.

8 Q. Would you characterize Reinier and his wife as being very
9 honest people?

10 A. Yes.

11 Q. And would you agree that -- that if people are owed
12 commissions and bonuses, Reinier and Andrea make a point to pay
13 that -- pay it out so people will produce more?

14 A. Yes.

15 Q. Since from 2020 to now, how many, like, insurance sales
16 agents, more or less, would you say there have been?

17 MR. CUMMINGS: Objection, speculation.

18 THE COURT: Overruled.

19 THE WITNESS: I would say between 30 and 40.

20 BY MR. TROPP:

21 Q. Has anyone ever complained of not receiving commissions or
22 bonuses, except for the Plaintiffs?

23 MR. CUMMINGS: Objection, speculation as to her
24 knowledge.

25 THE COURT: Overruled.

1 THE WITNESS: No.

2 BY MR. TROPP:

3 Q. Has anyone asked or complained that they are entitled to an
4 hourly wage and overtime, other than the Plaintiffs?

5 A. No.

6 Q. Was it always understood from the moment any agent, or like
7 yourself, started, that the basis of getting paid was on
8 commissions and bonuses?

9 A. Yes.

10 Q. And would you say also that the agents and the sales agents
11 are treated like professionals?

12 A. Yes.

13 Q. Treated like licensed professionals?

14 A. That's correct.

15 Q. Okay. And I want to ask you a quick question about being a
16 sales agent.

17 A. Okay.

18 Q. Would you agree that it requires a skill, special skill of
19 being very patient with people?

20 MR. CUMMINGS: Objection, calls for a legal
21 conclusion.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 BY MR. TROPP:

25 Q. Sometimes you have to talk to somebody and answer a lot of

1 questions, maybe for an hour or two?

2 A. Yes.

3 Q. And sometimes for these -- some of these commissions, you
4 just get, like, 10 or \$15?

5 A. Yes.

6 Q. You have to still talk and answer a bunch of questions?

7 A. That's correct.

8 Q. Would you consider that a special skill?

9 A. Yes.

10 Q. Let me ask you a question. Let's say Reinier or Avant had
11 the system that they had in place when the Plaintiffs were
12 there. Right? He gives -- and he would give the agents the
13 opportunity to get policies sold because of his referrals?

14 A. Yes.

15 Q. Do you think it would have been made -- it would have made
16 better sense for him not to tell them -- the agents to buy
17 their own Internet service and bring their own computers?

18 A. Well, to me, personally speaking for myself, the system
19 that Avant uses is really good because I don't have to bring
20 anything.

21 Q. Right. But let's say Avant and Reinier said, No, you can't
22 use your computer, you have to bring your own and you have to
23 bring your own Internet service, do you think that would make
24 you more of an independent contractor?

25 A. No.

1 Q. Would it make sense?

2 A. It would.

3 Q. Let's say you brought -- you wanted to bring or the
4 Plaintiffs wanted to bring their laptops and said, You know
5 what? I am not going to use your computer, I have got to use
6 mine, would they have been able to do that?

7 A. Yes, they would have. Yes, they would have.

8 Q. All you would have to do is ask for the access code?

9 A. Of course.

10 Q. And when you asked him -- when you asked anyone from Avant,
11 Reinier or Andrea, for the access to code to work from home or
12 away, would they give it to you?

13 A. Yes.

14 Q. And let me ask you this: Let's say that you wanted to work
15 for somebody else at the same time as you were working for
16 Avant, just like you did?

17 A. I did.

18 Q. Did anyone ever say to you or to any of the Plaintiffs, Oh,
19 no, you can only work here --

20 MR. CUMMINGS: Objection, calls for speculation.

21 THE COURT: I can't hear the objection.

22 MR. CUMMINGS: Objection, calls for speculation as to
23 what people said to other Plaintiffs.

24 THE COURT: Sustained.
25

1 BY MR. TROPP:

2 Q. Were you ever told by anybody at Avant, as a sales agent,
3 that you were not allowed to work for other -- selling other
4 policies or doing any other type of job?

5 A. No.

6 Q. And in open enrollment, that's a very busy time, right?

7 A. Yes.

8 Q. Would there be days -- would there be times and days where
9 you worked more than eight hours during open enrollment?

10 A. Yes.

11 Q. And did you do it because you had to or because you wanted
12 to?

13 A. Because I wanted to, to make more money.

14 Q. Did you ever hear anyone from Avant, Reinier or Andrea,
15 tell any of the Plaintiffs, Delio Batista, Mariana and Carlos
16 Lopez or Rafaela Valiente, that they had to work more than
17 eight hours?

18 MR. CUMMINGS: Objection, hearsay.

19 THE COURT: Sustained.

20 MR. TROPP: It would be from a party, Judge, party
21 admission.

22 THE COURT: Party opponent.

23 MR. TROPP: Okay. All right.

24 BY MR. TROPP:

25 Q. Did -- were there any rules or any -- were there any rules

1 from Avant that you were aware of that at any point said that
2 the Plaintiffs had to work more than eight hours a day?

3 A. No.

4 Q. You were there when Carlos left, right?

5 A. Yes.

6 Q. That was pretty -- there was a lot of excitement on that
7 day?

8 A. Yes.

9 Q. What happened?

10 A. There was somebody that used to work at Avant and called
11 Carlos to his office to confront him about what was said, and
12 in -- as part of that conversation, Carlos said to him that he
13 would invite him -- is inviting him over to --

14 MR. CUMMINGS: Objection, hearsay.

15 THE COURT: I can't hear the objection.

16 MR. CUMMINGS: Calls for narrative and is soliciting
17 hearsay. She's testifying as to what other people are saying.

18 THE COURT: Sustained.

19 BY MR. TROPP:

20 Q. Did you witness any violence?

21 A. Witness a threat?

22 Q. Okay. We will talk about that more when Carlos get --
23 comes up. But a few more questions.

24 While you were an agent, and this is '21 and '22?

25 A. Yes.

1 Q. And you were there basically the whole time, the whole
2 periods while the Plaintiffs were there?

3 A. Yes.

4 Q. Did you get along with them?

5 A. Yes.

6 Q. Did any of them ever tell you, Oh, we should be getting
7 paid overtime or hourly?

8 A. No.

9 Q. And while -- let's say you sold and you've made a bunch of
10 commissions. You would -- and you would have access to the
11 system. Would you be able to check to make sure that you were
12 paid right?

13 A. Through the Excel sheets of the clients that were
14 registered.

15 Q. What would you do to make sure you were paid right?

16 A. I would have asked Reinier.

17 Q. What about -- would you have access to the -- to the
18 clients that you closed on?

19 A. Yes.

20 Q. And would the agents monitor or make sure that they were
21 being paid right and correctly while they -- while you were
22 working there?

23 MR. CUMMINGS: Objection, calls for speculation.

24 Objection, calls for speculation, Your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: What was the question again?

2 BY MR. TROPP:

3 Q. While you were there as an agent, were you and -- as an
4 agent, able to verify and check to make sure that while you
5 were there, to go through the system and make sure you are
6 being paid correctly?

7 MR. CUMMINGS: Objection, asked and answered.

8 THE COURT: I can't hear the objection over the
9 interpreter, so you have to speak louder into the microphone.

10 MR. CUMMINGS: Objection, asked and answered.

11 THE COURT: Overruled.

12 MR. TROPP: Thank you. Thank you. That's all I have.

13 THE COURT: Redirect?

14 MR. CUMMINGS: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Ms. Ledesma, you are not trained in human resources, are
18 you?

19 A. No.

20 Q. You don't have a certification in human resources?

21 A. No.

22 Q. Okay. And do you know what the legal difference is between
23 an independent contractor and employee?

24 A. No.

25 Q. Now, are you aware of all of the complaints that my clients

1 may have made while they were still working at Avant?

2 A. No.

3 Q. Did you know any insurance agents at Avant who were working
4 for other insurance agencies at the same time?

5 A. I believe Rafaela was working for a different agency.

6 Q. Why do you think that?

7 A. Because she -- because she told me she was working with
8 Lincoln, something about final expenses.

9 Q. Something about what?

10 A. Final expenses.

11 Q. What does that have to do with selling insurance?

12 A. That is an insurance policy, a type of insurance policy
13 that is sold for people that want to have the funeral expenses
14 ready.

15 Q. And when did she tell you that?

16 A. When we were at the Kendall office.

17 Q. And did you ever see Ms. Valiente selling other insurance
18 policies for another insurance agency while she worked at
19 Avant?

20 A. No.

21 Q. In fact, when you are an insurance agent at Avant, isn't
22 your insurance license attached to Avant?

23 A. The health insurance license, yes.

24 Q. Okay. And you have to be released from one insurance
25 agency to work at another insurance agency, correct, if you are

1 selling the same type of insurance?

2 A. Yes.

3 Q. You mentioned that being an insurance agent at Avant
4 requires special skills?

5 A. Yes. In a certain way, yes.

6 Q. Okay. I believe Mr. Tropp said that you talk to people for
7 hours?

8 A. There's short phone calls, but you also have long ones.

9 Q. Okay. And so if you have a long phone call, that requires
10 a special skill?

11 A. For any sort of call, you need to have special skills,
12 like, for example, having patience, knowing how to deal with
13 clients, knowing how to manage objections.

14 Q. And so having patience is a special skill?

15 A. In this case, I would say so.

16 Q. Would you consider being a carpenter a special skill?
17 Somebody who knows how to build a house?

18 A. Yes.

19 Q. Somebody who has to go to school to learn different types
20 of wood and all the different types of frames that it takes to
21 construct buildings, do you consider that a special skill?

22 A. It could be.

23 Q. And do you -- do you think that carpenters have to receive
24 special training to learn their trade?

25 A. I think so, but I'm not a carpenter.

1 Q. If somebody came to build you a house, would you ask them
2 what kind of training they have?

3 A. I suppose so.

4 Q. And you would ask to see whatever certifications they have
5 and whether they went to school for carpentry?

6 A. Possibly.

7 Q. You don't want your house to fall down on you, do you?

8 A. Uh-huh, yes, I don't.

9 Q. And would you consider all of the training that a carpenter
10 has the same as talking to somebody on the phone for a long
11 time?

12 A. The thing is that in this case, it's not just a matter of
13 talking. It's being able to understand what different plans
14 you are going to be offering them, what they need. You have to
15 build empathy for the client and then customize the plan to
16 their needs.

17 Q. And everything that you just mentioned, these were things
18 that you learned on the job, correct?

19 A. Yes, that's experience.

20 (Pause in proceedings.)

21 THE COURT: Are we done with the witness?

22 MR. CUMMINGS: Yes, Your Honor, nothing further.

23 THE COURT: Thank you, you are excused, ma'am. Have a
24 good day.

25 MR. TROPP: Can I just --

1 THE COURT: And ladies and gentlemen -- I'm sorry?

2 MR. TROPP: Can I do a quick redirect *[sic]*, one quick
3 based on that, real quick?

4 THE COURT: Yes.

5 MR. TROPP: Real quick.

6 RECROSS EXAMINATION

7 BY MR. TROPP:

8 Q. We talk about working -- having to have a release from
9 other agencies that you just mentioned.

10 Now, Avant has some arrangements with some of these
11 policies, like Oscar or Ambetter, correct?

12 A. I believe so.

13 Q. And are you aware that those -- some of these particular
14 agencies, like Oscar or Ambetter, require that the agents don't
15 work -- that those agencies aren't sold by the agents at other
16 places?

17 MR. CUMMINGS: Objection, assumes facts not in
18 evidence, Your Honor.

19 THE COURT: Sustained.

20 BY MR. TROPP:

21 Q. Are the restrictions with -- involving the release and --
22 and the requirements of working with particular insurance
23 policies, was it -- was it regarding -- were there restrictions
24 on specific policies, or overall you can't work for other --

25 MR. CUMMINGS: Objection, assumes facts not in

1 evidence, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: I think it's per insurance company.

4 MR. TROPP: Thank you.

5 THE COURT: Thank you, ma'am. You have a good day.

6 Ladies and gentlemen, we will take a morning recess,

7 ten minutes. Please don't discuss the case.

8 COURT SECURITY OFFICER: All rise.

9 (The jury exited the courtroom at 10:43 a.m.)

10 MR. POLLOCK: Judge, I will go ahead and shoot over
11 these jury instructions.

12 THE COURT: Thank you. We are in recess.

13 (A recess was taken from 10:44 a.m. to 10:58 a.m.)

14 THE COURT: Your next witness, please.

15 MR. POLLOCK: Thank you, Your Honor. Plaintiffs call
16 Mariana Lopez Alcala.

17 THE COURT: Please come forward.

18 (Pause in proceedings.)

19 COURT SECURITY OFFICER: All rise for the jury.

20 (The jury entered the courtroom at 10:59 a.m.)

21 THE COURT: Everyone, please be seated.

22 Please raise your right hand.

23 (Time 10:59 a.m.)

24 MARIANA LOPEZ ALCALA,

25 a witness for Plaintiff, testified as follows:

1 THE WITNESS: Yes, I swear.

2 THE COURT: Please be seated.

3 DIRECT EXAMINATION

4 BY MR. POLLOCK:

5 Q. Good morning, Mariana.

6 A. Good morning.

7 Q. Good morning. Would you please introduce yourself to the
8 ladies and gentlemen of the jury?

9 A. Yes. Hi, good morning. My name is Mariana Lopez Alcala.

10 Q. You nervous?

11 A. Yes.

12 Q. Was yesterday your first time in the courtroom?

13 A. Yes, first time.

14 Q. Okay. I am going to ask you some questions, and if you can
15 just tell us the truth, this will be easy for you. Okay?

16 A. Okay.

17 Q. Where are you from?

18 A. Venezuela.

19 Q. Are you married?

20 A. Yes.

21 Q. What's your husband's name?

22 A. Francisco Suprani.

23 Q. When did you come to the U.S.?

24 A. 2016.

25 Q. And when did you get married to Francisco, before or after

1 you came to the U.S.?

2 A. Before.

3 Q. Do you and Francisco have any children?

4 A. Yes.

5 Q. How many?

6 A. Two.

7 Q. Two; boys, girls, boy and a girl?

8 A. Boys.

9 Q. How old are they?

10 A. Ten and five.

11 Q. Now, we're here about the lawsuit that you brought against
12 Avant Assurance, Mr. Cortes and Ms. Gonzalez Quintero.

13 Let's talk about Avant Assurance. How did you find out
14 about the job at Avant Assurance?

15 A. Through an Internet app.

16 Q. On which website, if you can remember?

17 A. I do remember, Innet [sic].

18 Q. Indeed?

19 A. Indeed.

20 Q. At the time that you saw the job posting for Avant, what
21 were -- what was the ad or what were you applying for, what
22 position?

23 A. They were looking for health insurance agents. And at that
24 point in time, I was going to school to get my health insurance
25 and life insurance license on my own, so I applied for the job.

1 And they called me over for an interview.

2 Q. The health and life insurance license that you were
3 studying for, does that license have a number?

4 A. The license, I'm not exactly sure -- the health and life
5 insurance license, I am not exactly sure whether it is 220 or
6 440.

7 Q. That raises a good question. Does the State of Florida
8 issue different license numbers for somebody who has a health
9 -- a license to sell health insurance versus somebody who is
10 licensed to sell both life and health and annuity insurance?

11 THE INTERPRETER: What was the last type of insurance,
12 Counsel? Sorry.

13 MR. POLLOCK: Health, life and annuity insurance.

14 THE WITNESS: Ah, yes, there are different types of
15 licenses. There is one that's complete for everything and
16 there's one that's just for health insurance, which is the one
17 that I hold right now.

18 BY MR. POLLOCK:

19 Q. Now, when you saw this ad for a health insurance agent on
20 Indeed from Avant Assurance, what did you do?

21 A. I applied for the position, and I received a phone call for
22 the interview.

23 Q. Who called you?

24 A. Alix Ledesma did.

25 Q. About how long after applying online do you recall her

1 calling you?

2 A. Approximately some 40 minutes after I applied.

3 Q. Did you have to interview to get this job at Avant?

4 A. Yes, I went to an interview at Avant's offices.

5 Q. Who did you interview with?

6 A. Mr. Cortes did it.

7 Q. What did Mr. -- well, did you tell Mr. Cortes about the
8 license you were studying for?

9 A. Yes, that's correct.

10 Q. And what did he tell you about the license that you were
11 applying for?

12 A. He said that I should study to get only the health
13 insurance license, which was shorter, so that I could start
14 working at the office. And later on if I wanted to get my life
15 insurance license, I could study that and get my license
16 separately.

17 Q. Did you have any discussions with Mr. Cortes about how he
18 would pay you for working at his agency?

19 A. During the interview, he drew some things on the white
20 board about the approximate amounts that a health insurance
21 agent would be able to make during the enrollment period.

22 Q. Did Mr. Cortes offer to pay you while you were studying for
23 your health insurance license?

24 A. Yes, that is correct; that is our agreement.

25 Q. How much did Mr. Cortes offer to pay you while you were

1 studying?

2 A. \$600 per week.

3 Q. Did Mr. Cortes tell you whether he was going to pay you as
4 an employee or independent contractor?

5 A. No.

6 Q. How did Mr. Cortes pay that first week you were studying?
7 Did he pay it in a check, direct deposit, Zelle?

8 A. Zelle.

9 Q. When you received the Zelle from Mr. Cortes or Avant
10 Assurance, did that Zelle deposit come in for \$600 or was it
11 \$600 minus the taxes and deductions that would normally be
12 taken for an employee?

13 A. The full \$600.

14 Q. And in order to get the health insurance only license, did
15 you have to restart the course?

16 A. Yes, I had to restart it, start over again because it was a
17 different course.

18 Q. For how many weeks did Mr. Cortes and his company pay you
19 this weekly salary to study for the health insurance license?

20 A. Two weeks.

21 Q. I am going to show you what's in evidence as part of
22 Exhibit 4.

23 (Plaintiffs' Exhibit No. 4 was identified.)

24 BY MR. POLLOCK:

25 Q. Do you recognize this e-mail?

1 A. Yes, I recognize it.

2 Q. Who sent the e-mail?

3 A. I sent it.

4 Q. When did you send it?

5 A. September the 27th, 2021.

6 Q. To whom did you send the e-mail?

7 A. To Andrea Gonzalez.

8 Q. Why did you send this e-mail to Ms. Gonzalez?

9 A. As evidence that as part of my course, I had already
10 obtained the pre-licensing.

11 Q. And why, in particular, did you send the e-mail to
12 Ms. Gonzalez Quintero instead of Mr. Cortes?

13 A. I think that at that point in time, I asked Andrea to print
14 the pre-license for me; that's why I think I sent it to her.

15 Q. Did you ultimately get your health insurance license?

16 A. Yes, I did. A few days after that e-mail.

17 Q. Do you remember when, what date?

18 A. Yes, I do. I obtained it on October the 8th.

19 Q. Why do you remember October 8th as the date you got your
20 license?

21 A. Because it was my birthday when I was finally able to pass
22 the exam.

23 Q. And that was October 8th of 2021?

24 A. Correct.

25 Q. Now, after you get your health insurance license, do you

1 continue to work in the office at Avant?

2 A. Yes, that is correct. I began doing sales on October the
3 11th.

4 Q. Do you remember what day of the week October the 11th was?

5 A. Yes, it was a Monday.

6 Q. So you go into the office on Monday. Did you have any
7 discussions with Mr. Cortes about how you would be paid once
8 you became a licensed insurance agent?

9 A. Yes, that's correct.

10 Q. What did Mr. Cortes tell you about how you would be paid
11 once you became a licensed insurance agent?

12 A. Initially it would be \$20 per hour, plus \$10 per each
13 member.

14 Q. Did you have this discussion with him before you came into
15 the office on Monday morning, October 11th of 2021?

16 A. No, not before. I mean, it was that same week once I
17 already had my license.

18 Q. Okay. Once you got your license, you go into Avant on
19 Monday morning?

20 A. Yes, correct.

21 Q. Did you have any knowledge about how to sell insurance at
22 that point?

23 A. No.

24 Q. I mean, were there any skills that you had developed that
25 were particular to selling insurance before you started on

1 Monday, October 11th?

2 A. No, none.

3 Q. Now, in order to work as an insurance agent at Avant, did
4 you have to receive any training?

5 A. Yes. The week before I graduated with my license, I
6 received training through another company that I was also
7 looking into. Andrea explained to me how to use the CRM, and
8 then once I obtained my license on that Monday, the 11th, I
9 shadowed Alix Ledesma to learn about the process of how she
10 would do the patient registration -- the client registration.

11 Q. Now, when Ms. -- Ms. Gonzalez Quintero showed you how to
12 use the CRM, was that the Radius Bob software?

13 A. Yes, correct.

14 Q. Had you ever worked with this program before you started at
15 Avant?

16 A. No, never.

17 Q. And about how long did it take Ms. Quintero to train you to
18 use this software that Avant uses in their business?

19 A. Not more than one hour.

20 Q. Do you consider yourself as having any special computer
21 skills that would allow you to learn this software in an hour?

22 A. No.

23 Q. As far as selling the insurance products themselves, how
24 did you learn how to do that?

25 A. Well, during the weeks that I was still studying, I -- I

1 had a chance to hear everyone do their own sales.

2 Q. So you were listening to what the agents around you were
3 saying on the phone?

4 A. Yes, that's correct.

5 Q. Was there any agent who you would sit with or sit next to
6 to learn how they sold insurance policies?

7 A. No. During the time that I was still studying, I was in an
8 office, but from that office, I could hear everybody because it
9 was a very small office.

10 Q. After you got your license, were you still in an office?

11 A. No. At that point in time, I was already seated outside
12 with the rest of the agents that worked there.

13 Q. Was there any -- who were you sitting next to, as far as
14 the other agents?

15 A. Well, over to my right, there was Christopher Vasquez;
16 behind me there was Ana Gomez -- Monge, Ana Monge.

17 Q. Where was Alix Ledesma in relation to you?

18 A. She was behind Ana.

19 Q. Once you became an insurance agent, did Ms. Gonzalez
20 supervise you in your work at all?

21 A. Yes, of course.

22 Q. How did she supervise you in your work?

23 A. She could hear everything that each one of us agents were
24 saying over the phone, and if she had any correction to give
25 us, she would either say it from where she was seated or she

1 would come to you to let you know.

2 Q. Did she give you these corrections while you were on the
3 phone with leads or potential clients?

4 A. Yes. On many occasions we would even put our headsets on
5 mute and we would hear her suggestions and then continue on
6 with the sale.

7 Q. Did Mr. Cortes do this also?

8 A. No. He would always be inside his office.

9 Q. As far as you could see, what role did Ms. Quintero --
10 Ms. Gonzalez Quintero have at Avant?

11 A. She handled the part regarding customer support in
12 Colombia. She also handled the section that had to do with
13 external agents, those agents that did not work inside the
14 office, verifying their licenses and the different appointments
15 that they had with the companies.

16 Q. Then you said that she would also monitor your phone calls?

17 A. Yes. And if there was something wrong that we were doing,
18 the people in Colombia would also listen to the phone calls,
19 they would let her know and she would then have a talk with us.

20 Q. How often would Ms. Gonzalez Quintero talk with you about
21 how you were selling policies during your first, let's say,
22 month there?

23 A. No, it was very few times.

24 Q. Now, you mentioned that Mr. Cortes promised to pay you \$20
25 an hour, plus \$10 for each member that you signed up before

1 open enrollment?

2 A. Before opening enrollment began.

3 Q. Now, when you received payment for that period of time when
4 you were an agent before open enrollment, did you find that
5 Mr. Cortes kept his promise or not?

6 A. No, he did not. Because we had agreed to \$20 per hour,
7 plus \$10 per member, but when I received the payment, I did get
8 the \$20 per hour but only \$5 per member.

9 Q. Now, you heard Mr. Cortes testify that nobody ever
10 complained to him about how much they were paid.

11 Did you complain to Mr. Cortes about only receiving \$5 per
12 member when he promised you \$10 per member?

13 A. Yes, I went to his office and I asked him why.

14 Q. What did he say?

15 A. That it wasn't 10, that it was supposed to be 5.

16 Q. For open enrollment 2021/2022, did you work at Avant the
17 whole time?

18 A. Most of the open enrollment period, I did.

19 Q. When did the open enrollment period start for '21/'22?

20 A. Officially they begin on November the 1st, but we begin,
21 approximately, on October 26th.

22 Q. How were you able to start selling policies early?

23 A. Because the plans are already available by then.

24 Q. And when did open enrollment end in the '21/'22 year?

25 A. January 2022.

1 Q. Was that the beginning of January or the end of January?

2 A. I really think it ended on January the 15th, but either
3 way, we remained doing sales up until January 31st.

4 Q. Now, when you start selling insurance policies, do you get
5 paid immediately?

6 A. Before the open enrollment began, I did receive that \$20
7 per hour payment plus the \$5 per member.

8 Q. Did that change during open enrollment?

9 A. Yes. Once open enrollment began, what I started getting
10 was an advance on the payment.

11 Q. And what do you mean you were getting in advance on the
12 payment?

13 A. Regardless of the amount I would make as far as sales are
14 concerned, I would receive \$1,000 per week to be able to cover
15 for expenses that I may have had during November and December
16 until he would be able to collect on the policies that were
17 sold.

18 Q. So during open enrollment, did you receive money as soon as
19 you sold the policy, or did you have to wait to get paid for
20 those sales?

21 A. I did not. He would give us an advance, once every two
22 weeks.

23 Q. And then how long after the sales would be made would you
24 get paid by Avant for those sales?

25 A. What we sold in November and December, we received,

1 approximately, in the month of February.

2 Q. I am going show you what's in evidence as Exhibit 8, which
3 is a two-page exhibit. We have seen this before.

4 (The exhibit was published to the jury.)

5 BY MR. POLLOCK:

6 Q. My question to you is, before this trial, did you see this
7 document while you were working as an insurance agent at Avant?

8 A. Yes, I did receive it.

9 Q. When did you receive this compensation plan from Avant?

10 A. Approximately one week after open enrollment began.

11 Q. How did you receive it?

12 A. They left this sheet on the desk of each agent.

13 Q. Did someone have a meeting or give a talk or an explanation
14 about what the document was that they left on your desk?

15 A. Yes, that is correct.

16 Q. Who led that discussion?

17 A. Mr. Cortes did.

18 Q. What did he explain about this compensation plan?

19 A. He explained to us the different prices, the different
20 commissions that each one of the companies were paying. And he
21 explained to us what types of bonuses were being offered by
22 each one of the companies for the open enrollment period.

23 Q. You mentioned the bonuses, and we are looking at Page 2 of
24 Exhibit 4. Are these the bonuses that you are talking about?

25 A. Yes, that's correct.

1 Q. Did Mr. Cortes say anything about the Oscar bonus?

2 A. Yes. We spoke about all the different bonuses from all the
3 companies that appear in this sheet of paper.

4 Q. Did Mr. Cortes explain that if you continued working for
5 his company, that this is how you were going to get paid
6 according to the compensation and bonuses identified on this
7 exhibit?

8 A. That's correct.

9 Q. If you didn't like this compensation plan, what would you
10 do?

11 A. Yes, you could leave. That's the only offering made by the
12 company.

13 Q. Did you accept the offer by continuing to work?

14 A. Yes, correct.

15 Q. And did you sell insurance policies based on this
16 compensation and bonus structure that was offered to you?

17 A. Yes, correct.

18 Q. I'll come back to this in a moment.

19 You were here when Ms. Ledesma went through with -- and
20 talked about a couple of schedules that were shown.

21 A. Yes, correct.

22 Q. Did Avant Assurance provide written schedules for when it
23 -- for when the agents were going to work during the open
24 enrollment period?

25 A. No.

1 Q. Were you told the hours that you were supposed to work
2 during the open enrollment period?

3 A. The office was open from 9 a.m. to 9 p.m. You had to cover
4 both shifts so that there could always be people in the office
5 available to do sales.

6 Q. And you mentioned 9 a.m. to 9 p.m. What days of the week
7 did you normally work during the open enrollment period?

8 A. During open enrollment, I personally worked from Monday
9 through Friday.

10 Q. So you worked 12 hours a day for about five days a week for
11 60 hours a week on average?

12 A. Most of the days.

13 Q. Were there days when you would have to leave to go pick up
14 your son from baseball or school?

15 A. Yes, that's correct.

16 Q. And then would you stay home or go back to the office?
17 What did you do?

18 A. Sometimes I would stay, and other times I would go back.

19 Q. Were there times when you worked on Saturdays?

20 A. During the entire open enrollment period, I only worked two
21 Saturdays.

22 Q. What hours did you work?

23 A. On Saturdays, I think it was either from 9:00 to 3:00 or
24 10:00 to 4:00, something like that.

25 Q. For those of us that haven't worked at a call center

1 selling insurance during open enrollment, how would you
2 describe it?

3 A. Madness.

4 Q. Madness how?

5 A. Many clients wanting to get their health insurance all at
6 the same time. It's a pretty large volume of phone calls.

7 Q. You are in an area where there's about seven or eight
8 workstations that are all near each other?

9 A. Yes, that is correct. At that point in time, there were
10 eight of us working at the office at the same time.

11 Q. When a phone -- a soft phone would ring -- let me back up
12 for a second.

13 Were there physical phones at the office on the desk where
14 you would pick it up and answer it?

15 A. No. We would answer through our computers, using our
16 mouse.

17 Q. When -- when the inbound leads would come through to your
18 computer, would you hear the phone ring?

19 A. Yes, correct.

20 Q. Would it play through your headset, or would it play
21 through the speakers?

22 A. The headset.

23 Q. And then you would go ahead and you would click your mouse
24 to open -- to turn on the call?

25 A. You would click on answer and there you would have the

1 call.

2 Q. Before we get into the call, I want to talk about
3 afterwards.

4 THE INTERPRETER: I'm sorry, Counsel, what was that?

5 BY MR. POLLOCK:

6 Q. Before we get into the call, I want to talk about
7 afterwards.

8 THE INTERPRETER: After?

9 MR. POLLOCK: After the call.

10 THE WITNESS: Okay.

11 BY MR. POLLOCK:

12 Q. When you would click the mouse to hang up the call, during
13 open enrollment, how much time was there between calls that you
14 were getting?

15 A. During the open enrollment, it was usually one call right
16 after the other, like all of us talking at the same time. And
17 as soon as you would hang up, there was another call just
18 waiting for you right after that.

19 Q. So if you were working 12 hours a day during open
20 enrollment, how many of those hours do you think you were on
21 the phone talking to leads?

22 A. Most of the time, except when you would go and take a
23 break. I would go to the bathroom and -- or go to get a smoke
24 and then come back to my position.

25 Q. After being on the phone for the better part of 12 hours a

1 day, how did you feel when you left work?

2 A. Exhausted. You didn't want to talk, not even with
3 yourself.

4 Q. What'd you listen to when you got in your car to drive
5 home?

6 A. Nothing. I don't -- I didn't want to hear anything at all.

7 Q. The other agents that were working with you during this
8 open enrollment period, what were their names?

9 A. Christopher Vasquez, Ana Monge, Katrina Guerra, Rafaela
10 Valiente, Delio Batista, Alix Ledesma and Carlos Lopez.

11 Q. When you were on the phone with a lead, on average, how
12 long would you say that you would be on the phone for that
13 call?

14 A. Before the consent was implemented, I would personally take
15 about five minutes with each call. Now, once the consent was
16 implemented, it was a little bit longer because you have to
17 wait for the time period that it would take for the clients to
18 respond to the questions of the consent.

19 Q. And the consent form that you are talking about, is that
20 the consent form that Mr. Cortes required each of the members
21 to sign to protect the agency?

22 A. Yes, correct.

23 Q. I will show you what was -- what's in evidence as Exhibit
24 6.

25 (The exhibit was published to the jury.)

1 BY MR. TROPP:

2 Q. Which says "Client Consent Statement" at the top. Have you
3 seen the form of this document before?

4 A. Yes, of course.

5 Q. Is there another version of this document that was used at
6 Avant that's in Spanish?

7 A. Yes, that's correct.

8 Q. Now, do you remember when these consent statements started
9 to be used at Avant?

10 A. Yes, November 17th, 2021.

11 Q. Is there a reason why you remembered that day, or are you
12 just good with dates?

13 A. No, I just remember it. Just a thing I remember.

14 Q. Now, for these consents, client consent statements, were
15 you told that these should be used, or were you told that these
16 must be used?

17 A. No, we were told it was mandatory beginning then.

18 THE COURT REPORTER: I'm sorry, no, we were told it
19 was what?

20 THE INTERPRETER: That it was mandatory beginning
21 then.

22 BY MR. POLLOCK:

23 Q. Did anyone at Avant or the -- or in Colombia for Avant make
24 sure that these consent statements were signed by each member
25 who enrolled?

1 A. Yes. Unless we would attach this as part of the CRM file,
2 our sales would be tagged as an issue and we would not be paid
3 for that sale.

4 Q. Did that ever happen to you where you had sales that were
5 flagged and not paid because this consent statement was not
6 attached to the CRM file?

7 A. No, because at that point in time -- we could see, as soon
8 as we arrived at the office, we could see the issues in the
9 system. So as soon as we would get in for the day, we would
10 try to contact the clients to be able to resolve all of the
11 issues so that we could get paid for those sales.

12 Q. Now, you said you have to attach the client consent
13 statement to the CRM?

14 A. Correct.

15 Q. Was there a process for -- for doing that, for getting the
16 consent, having it signed and having it attached?

17 A. That is correct.

18 Q. What was the process?

19 A. You would send it to the customer at their cell phone. You
20 would explain to the client what it is that they needed to do
21 in order to finalize it. Once the client would continue
22 clicking -- would finish clicking on it, the agent would
23 download the consent form from the Blue Ink system, and once it
24 was downloaded into our computers, we would attach it as part
25 of the CRM file.

1 Q. Okay. So you had to send it by -- you would send it to the
2 customer's cell phone; was that something you would do through
3 Blue Ink?

4 A. Yes, correct.

5 Q. When you would receive the signed consent form back through
6 Blue Ink, would that be through the billing software or would
7 it be through an e-mail attachment?

8 A. Through Blue Ink itself.

9 Q. Then you would download it and then upload it to Radius Bob
10 for the particular client?

11 A. Correct.

12 Q. Was there someone at Avant that showed you how to perform
13 this procedure?

14 A. Yes, Mr. Cortes did when he first implemented the Blue Ink
15 system.

16 Q. At the time, did Mr. Cortes explain that if this signed
17 consent was not in the client's file in Radius Bob, that you
18 would not be paid for that sale?

19 A. Yes, that is correct. We received the instruction that
20 from that point on, it was mandatory for the sale to have that
21 consent form, otherwise -- in this -- in the system of Blue
22 Ink, otherwise the sale would not be processed.

23 Q. Was the consent form required by any of the insurance
24 carriers themselves?

25 A. At that point in time, no.

1 Q. So this was a requirement that Mr. Cortes put on each of
2 his agents in order to pay them; is that a true understanding?

3 A. At that point in time, that form did not constitute a part
4 of the requirements within the insurance marketplace. I
5 understood it to be a document for protection, an internal
6 document for the company's protection.

7 Q. I am going to refer you back to Exhibit No. 8.

8 (The exhibit was published to the jury.)

9 MR. POLLOCK: And I am going move to Page 2.
10 Actually, let me start with Page 1.

11 BY MR. POLLOCK:

12 Q. Was there any insurance that the agents in the office tried
13 to sell the most?

14 A. Yes, of course. The ones for Ambetter, Friday and Oscar.

15 Q. Why is that?

16 A. Because these are the ones that paid the highest
17 commissions and the ones that offered bonuses.

18 Q. And so how much were you supposed to get paid for every
19 member that you signed up under Ambetter, Friday and/or Oscar?

20 A. \$35 per member.

21 Q. For those three insurance carriers?

22 A. Either one of the three.

23 Q. Now, was there any one of those three that the agents in
24 the office tried to sell more of?

25 A. Yes.

1 Q. Which?

2 A. Oscar.

3 Q. Why is that?

4 A. Because it was the one that had the highest bonus.

5 Q. What was the bonus that you and the other agents were
6 trying to earn?

7 A. We all would try to sell Oscar in order to earn the bonus.

8 Q. Now, when you would sell an insurance policy, was there any
9 record that would be created to show what you sold?

10 A. Yes, we did have a record in an Excel sheet.

11 Q. Who created and shared this spreadsheet?

12 A. Mr. Cortes did.

13 Q. Now, the spreadsheet that was shared with you, did it have
14 only your policies, or did it have all the policies sold by all
15 the agents in the office?

16 A. The first one that I received before open enrollment began,
17 my fellow coworkers did appear, but then after open enrollment
18 began, the ones that I received, they were mine individually.

19 Q. And the spreadsheet that Mr. Cortes created and shared with
20 you that had the sales that you made during open enrollment,
21 until when did he share that document with you?

22 A. That one ended on January the 31st.

23 Q. So after January 31, 2022, did you have access to the
24 spreadsheet that Mr. Cortes created with all of the insurance
25 sales that you made?

1 A. No, we no longer had any access to it.

2 Q. Now, at the time that the -- let me start over.

3 The insurance policies that you had sold during open
4 enrollment, had you gotten paid for those by January 31 of
5 2022?

6 A. No.

7 Q. So when did you first get paid for insurance policies that
8 you sold during open enrollment?

9 A. Well, we started receiving the advances in November and
10 December, and if I remember correctly, as far as commissions
11 are concerned, we started receiving Oscar's either in February
12 or March.

13 Q. So how were you able to compare the policies you paid --
14 you were paid for versus the policies that you sold?

15 A. No, once you lost access to that Excel sheet, there was no
16 way for you to check. Now, I personally had my own chart where
17 I could compare with what I was getting paid with the sales
18 that I made.

19 Q. Mr. Cortes mentioned that if you wanted to know what
20 happened between the number of sales that you had and the
21 number of sales you were paid for, that you could have called
22 each of the members you signed up you didn't get paid for.

23 Do you remember hearing that?

24 A. Yes, I recall that.

25 Q. Would a member know why their policy wasn't credited to

1 your name for a sale?

2 A. No. Because we didn't have access to the Excel sheet any
3 longer, so we had no way of comparing the statement -- the
4 commissions we were getting paid for versus the statement of
5 what we had sold.

6 Q. Mr. Cortes suggested that you could have called the
7 individual members who you thought you signed up but who you
8 didn't get paid for.

9 A. We had -- we didn't have access to the Excel sheet which
10 told us the phone number of that sale, and therefore, we had no
11 way of knowing which one of the numbers or the sales was
12 missing. There was no way to compare the two.

13 Q. For Oscar, how many policies did you sell?

14 A. 955 members.

15 Q. How do you know that?

16 A. Because I took a picture of my sales sheet.

17 (Pause in proceedings.)

18 BY MR. POLLOCK:

19 Q. Now I want to show you Exhibit 12, which I went through
20 with Mr. Cortes yesterday and came up with some totals.

21 (The exhibit was published to the jury.)

22 BY MR. POLLOCK:

23 Q. So Mr. Cortes and the Defendants credited you with 688
24 sales. Were you bothered by this difference?

25 A. I sent him an e-mail with all the different carriers which

1 I considered I had money missing from and the differences that
2 I found regarding the sales performance and what I had received
3 as far as payments.

4 Q. Did Mr. Cortes respond to your e-mail?

5 A. No.

6 Q. There was talk about you could work from home whenever you
7 wanted. Were you allowed to work from home whenever you wanted
8 to?

9 A. No, that isn't correct.

10 Q. Where were you required to work?

11 A. At the Kendall office.

12 Q. Was there a time when you got COVID?

13 A. Yes, that's correct.

14 Q. When was that, when did you have COVID?

15 A. End of December 2021, early January 2022.

16 Q. Okay. I am going to show you this part of Exhibit 4.

17 (The exhibit was published to the jury.)

18 BY MR. POLLOCK:

19 Q. Do you recognize this e-mail?

20 A. Yes.

21 Q. Mr. Tropp, when he was examining Ms. Ledesma, was asking
22 about Jorge Tomayo. Do you recognize Jorge Tomayo as somebody
23 who used to work for my office?

24 A. Yes.

25 Q. And Brigitte, does Brigitte work for my office?

1 A. Yes.

2 Q. And so at the top where you're forwarding this e-mail, is
3 this so that you could send the e-mail to my office?

4 A. Yes, correct.

5 Q. Now, the e-mail that you really should pay attention to is
6 below; is that right?

7 A. Yes, that's correct.

8 Q. Okay. Let's look at it without the distractions. Now, on
9 Tuesday, January 20 -- January 4th, 2022 at 7:19 p.m., what did
10 you do?

11 A. I contacted the users that Mr. Cortes sent me by e-mail.

12 Q. When you sent an e-mail to Mr. Cortes, how did you refer to
13 him in this e-mail?

14 A. "Hello, boss."

15 Q. Is that how you referred to Mr. Cortes, as boss?

16 A. I would always call him boss, yes.

17 Q. Would he ever tell you, Hey, don't call me that, I'm not
18 your boss?

19 A. No, never.

20 Q. And so you are asking him to send you what in this e-mail?

21 A. He wrote me -- so that I wouldn't lose sales or miss out on
22 sales due to the fact that I had contracted COVID -- to my cell
23 phone asking me if I could connect or log in from home. He
24 asked me if I had good Internet or if I had headphones. And
25 then afterwards, he sent me the links so that I could open the

1 links from home.

2 Q. So did this e-mail, where Mr. Cortes sends you the log-in
3 information for the websites that you needed to work, come
4 about because you asked him to work from home, or did he ask
5 you to work while you were home sick?

6 A. He asked me.

7 Q. Now, the first link is to access what software?

8 A. It's for the Radius Bob, CRM.

9 Q. Before -- before January 4th, 2022, did you know the e-mail
10 -- the Internet address of where to access Radius Bob from your
11 home?

12 A. As far as knowing it is considered, yes, we knew it because
13 we would work on a daily basis with the CRM. But we were not
14 authorized to access it from our homes.

15 Q. Who authorized it -- who authorized you to work from home
16 in early January of 2022?

17 A. Mr. Cortes did.

18 Q. And for how long did he authorize you to work from home in
19 January of 2022?

20 A. Until my COVID went away and I could go back to the office.

21 Q. What about the website below, what's that one stand for?

22 A. That's the site where you quote the different policies in
23 the insurance marketplace.

24 (Pause in proceedings.)

25 BY MR. POLLOCK:

1 Q. If you were going to miss a day of work, were you expected
2 to let --

3 THE COURT REPORTER: I'm sorry, let what?

4 MR. POLLOCK: Let Avant know.

5 THE WITNESS: Yes, we would let Alix know.

6 BY MR. POLLOCK:

7 Q. I mean, were you allowed to just not show up for days on
8 end during open enrollment?

9 A. It was our duty to show up to work every day.

10 Q. Now, did you bring any of your own items to work?

11 A. No.

12 Q. Did you bring any headsets or keyboards or monitors or a
13 mouse or a computer, anything like that to the office so that
14 you could work?

15 A. Yes, I did buy my own mouse out of my own comfort, for my
16 own comfort.

17 Q. Did you buy anything else?

18 A. No.

19 Q. And about how much did you spend on that mouse?

20 A. Like \$14 on Amazon.

21 (Pause in proceedings.)

22 BY MR. POLLOCK:

23 Q. When you received your insurance license for Florida, did
24 you receive or apply for insurance licenses to sell insurance
25 anywhere else?

1 A. No.

2 Q. So you wouldn't have sold any insurance for Blue Cross Blue
3 Shield of Texas or Illinois?

4 THE INTERPRETER: I'm sorry, Counsel, what was that?

5 BY MR. POLLOCK:

6 Q. Would you have -- did you sell insurance for Blue Cross
7 Blue Shield of Texas or Illinois?

8 A. No. It was Mr. Cortes that filed those applications for
9 me.

10 Q. How did he file those applications for you?

11 A. Because I didn't know how to do that, and he applied in
12 every state where he had learned that he could sell insurance.

13 Q. What was your involvement in applying for these licenses to
14 sell insurance in the different states?

15 A. Well, I went over to his office, and as he was filling out
16 the applications, he made the payment. I think that in total
17 -- for the different states. In total, he paid, like, \$800 for
18 all the applications for all the different states. So what it
19 was is that he would fill those out while I was there, and then
20 in some of them, I had to provide my Social Security number,
21 and some others I think there were some signatures, like
22 digital signatures and in others, my ID needed to be attached
23 as well and so he handled all of that.

24 MR. POLLOCK: Your Honor, at what point do you want to
25 take a break, just so I can gauge my exam? If it's a good

1 point now.

2 THE COURT: How much longer?

3 MR. POLLOCK: I'm going to have a bit, probably an
4 hour.

5 THE COURT: You have three other witnesses for today,
6 so how much longer?

7 MR. POLLOCK: I'm sorry?

8 THE COURT: You have three other witnesses for today;
9 how much longer with her?

10 MR. POLLOCK: Um, probably 30, 40 minutes.

11 THE COURT: Well, we will break at 12:30, in five
12 minutes.

13 MR. POLLOCK: And I'll be -- I will try to run
14 through, be quick and then move on.

15 THE COURT: Okay.

16 MR. POLLOCK: Your Honor, if you want to break now,
17 then I can just run through it after.

18 THE COURT: Very well.

19 MR. POLLOCK: So it's 12:30 and then we can resume and
20 I will just try to finish by 1:00.

21 THE COURT: Thank you.

22 MR. POLLOCK: Thank you, Your Honor.

23 THE COURT: Ladies and gentlemen, we will take our
24 lunch recess. Please do not discuss this case. Please avoid
25 contact with the parties. And we will see you back at 1:30.

1 **Have a good lunch.**

2 **COURT SECURITY OFFICER: All rise for the jurors.**

3 **(The jury exited the courtroom at 12:26 p.m.)**

4 **THE COURT: You all have a good lunch.**

5 **MR. CUETO: Thank you, Your Honor.**

6 **(A lunch recess was taken at 12:26 p.m.)**

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A F T E R N O O N S E S S I O N

(1:37 p.m.)

COURT SECURITY OFFICER: All rise.

MR. POLLOCK: Your Honor, before the jury comes in, real quick. I don't recall that Your Honor gave the usual instruction about if the jurors encounter lawyers in the hallway.

THE COURT: Not to have contact with them.

MR. POLLOCK: Not to have contact with them. So I just want to make sure that that was given.

THE COURT: I have given that before. Why?

MR. POLLOCK: It just popped into my head, and one of the jurors said, you know, hello and I didn't say anything.

THE COURT: Oh, all right.

MR. POLLOCK: I didn't want them to think I was rude. I didn't respond, but I just smiled.

THE COURT: That's fine. All right. Thank you.

(The jury entered the courtroom at 1:38 p.m.)

THE COURT: Everyone, please be seated.

Please continue.

MR. POLLOCK: Thank you, Your Honor.

DIRECT EXAMINATION (Cont'd.)

BY MR. POLLOCK:

Q. Mariana, I want to just talk a little bit about the end of your employments with the Defendants. Do you remember when

1 that was?

2 THE INTERPRETER: I'm sorry, Counsel, can I get that
3 question again?

4 BY MR. POLLOCK:

5 Q. I want to talk about the end of your employment with the
6 Defendants. Do you remember when that was?

7 A. July the 11th.

8 Q. And I want to show you what's been marked as part of --
9 what's been introduced into evidence as part of Exhibit 4, and
10 tell me if you recognize this e-mail.

11 (The exhibit was published to the jury.)

12 BY MR. POLLOCK:

13 Q. Do you recognize the e-mail?

14 A. I do.

15 Q. And why did you send this e-mail?

16 A. Because that day, July the 11th, I had surgery scheduled
17 for one of my wisdom teeth, and I was notifying that I was not
18 going to be showing up to work.

19 Q. Were you required to let the Defendants know that you
20 weren't going to be at work in advance?

21 A. As per the prior e-mails and the new instructions regarding
22 the company policies, we had to inform Alix by e-mail and
23 Jennifer Manjarres whenever we were going to miss work or
24 arrive late.

25 Q. Did you send any other e-mails on July 11th of last year?

1 THE INTERPRETER: On July 1?

2 MR. POLLOCK: July 11th of last year.

3 THE WITNESS: Yes, correct. Correct. After my
4 surgery when I notified them that I was no longer going to be
5 working at the office.

6 BY MR. POLLOCK:

7 Q. Now, can you read for us in Spanish the e-mail that you
8 sent on July 11th of 2022, at 3:24 in the afternoon?

9 A. Yes, of course.

10 Q. Please go ahead and read it out loud.

11 A. (Witness reading in Spanish.)

12 "Good afternoon. Given to the uncomfot that I have been
13 feeling lately in the work environment, added to the anxiety
14 that generates having to work on a daily basis with the police
15 officer within the installations after the supposed threat from
16 an ex former coworker, I have decided to no longer provide
17 services as an insurance agent -- health insurance agent which
18 I have been providing up until Friday, July the 8th of 2022.
19 With nothing to add, Mariana Lopez."

20 Q. So were you saying that July 8th of 2022, was going to be
21 your last day, or was it August 7th of 2022 going to be your
22 last day?

23 A. July the 8th was the last day that I worked there.

24 Q. And you are saying that there was a police officer who was
25 inside of the office?

1 A. Yes, that's correct.

2 Q. And who is the ex-coworker that had been making those
3 threats that you were concerned about?

4 A. Alberto Garza.

5 Q. What kind of threats did Mr. Garza make?

6 A. According to what Mr. Cortes told us, supposedly Mr. Garza
7 had gone to the office due to what had occurred with Carlos and
8 Delio in the morning, and he had come -- he arrived armed.
9 That's why he called the police of Doral.

10 Q. I need to move on.

11 Your husband, Francisco Suprani, does he work outside the
12 home?

13 A. Yes.

14 Q. What does he do?

15 A. He's into boat maintenance.

16 Q. Before his current job, did he work for himself?

17 A. Yes.

18 Q. What was the company that he worked for?

19 A. Uber.

20 Q. Okay. Did you husband have his own company?

21 A. In 2021, both him and I created, opened a company.

22 Q. What's the name of the company that you and your husband
23 built?

24 A. Suprani Service LLC.

25 Q. Did you and your husband do any business through Suprani

1 Services LLC?

2 A. Yes.

3 Q. Before working with Avant, did you perform any services
4 through Suprani Services?

5 A. No, I never did.

6 Q. Now, when you worked at Avant, because they decided you
7 were an independent contractor, how many 1099s did you receive
8 from them?

9 A. One. One for 2021.

10 Q. What about for 2022, did they ever send you any?

11 A. Yes, I received this year the ones for 2022.

12 Q. You said the ones. Did they send you more than one 1099
13 for 2022?

14 A. I received two for the year 2022.

15 Q. Okay. Why did you receive two 1099s for 2022?

16 A. Because the months of January and February were paid to me
17 as Mariana Lopez as an individual, and from March forward, I
18 was paid under Suprani Service LLC.

19 Q. I am going to show you what's in evidence as Exhibit 3 as
20 redacted and see if you recognize this document.

21 (Plaintiffs' Exhibit No. 3 was identified.)

22 (The exhibit was published to the jury.)

23 BY MR. POLLOCK:

24 Q. Do you recognize this?

25 A. I do.

1 Q. What is this; is this a 1099?

2 A. It is a 1099 that I received for 2021.

3 Q. Now, this 1099 indicates that Avant Assurance paid you
4 personally \$23,465; is that what it says?

5 A. Yes, that's correct.

6 Q. Okay. Now, this \$23,465, does this include the weeks that
7 you were paid \$600 while you were studying?

8 A. Yes, that's correct.

9 Q. And does this 23,465 also include the weeks that you were
10 paid \$800 before open enrollment?

11 A. Yes, that's correct.

12 (Pause in proceedings.)

13 BY MR. POLLOCK:

14 Q. And then did you make commissions that were included in
15 this 1099 before open enrollment started?

16 A. Yes, that's correct.

17 Q. How much in commissions did you receive before open
18 enrollment?

19 A. I believe I had a deposit for the amount of 1,265. And
20 another one for 800.

21 Q. The 800 was commissions, or was that the weekly pay?

22 A. The 800 were for the weekly pay.

23 Q. Okay. So with the rest of the money that you were paid
24 after deducting the commissions and the weekly pay before open
25 enrollment, represent the advances that you received from Avant

1 towards the money you make in open enrollment?

2 A. Yes, that's correct.

3 Q. Okay. Now I will show you what's in evidence as Exhibit
4 12, which is the spreadsheet that I had previous reviewed with
5 Mr. Cortes.

6 (The exhibit was published to the jury.)

7 BY MR. POLLOCK:

8 Q. I'm trying to make it a little bit bigger so we can see
9 what's going on here.

10 Mr. Cortes said that this was a spreadsheet that represents
11 all the payments to you and Delio and Rafaela, Anna and Carlos.
12 And then here we had looked at the amount that he had paid to
13 everybody for Oscar.

14 Do you remember seeing that?

15 A. Yes, I remember.

16 Q. And then in here, he's included the amounts that he's paid
17 and who he paid those moneys to. Do you see that?

18 A. Yes, I can see that.

19 Q. And we see that the first payment was made to you in 2022
20 on what date?

21 This was the deliver by date. So if we go down to you, it
22 was delivered by direct deposit, money to you on what date?

23 A. January the 1st of 2022.

24 MR. POLLOCK: January or February?

25 THE INTERPRETER: February the 1st of 2022.

1 BY MR. POLLOCK:

2 Q. Okay. And he then paid you \$9,110?

3 A. Yes, that's correct.

4 Q. And then he paid you -- and that was the only amount that
5 he paid you in January -- excuse me, in February; do you see
6 that?

7 A. Correct.

8 Q. Now, if we look at this \$9,110, Mr. Cortes had summarized
9 the amount that he paid to you every month in the first page of
10 this document. So let me jump there.

11 A. Okay.

12 Q. And he said he paid you \$15,080 in February?

13 A. Correct.

14 Q. Okay. So we would see another deposit of \$5,970 in
15 February, on the 23rd; do you see that?

16 A. I can see that.

17 Q. So those two numbers together should add up to the \$15,080.

18 A. Okay.

19 Q. Now the \$15,080, was that supposed to pay you for part of
20 the money you earned in open enrollment?

21 A. That's correct.

22 Q. Again, in March, Mr. Cortes indicates he paid you \$12,525;
23 do you see that?

24 A. I can see that.

25 Q. Do you agree that's the amount he paid you in March?

1 A. I believe so.

2 Q. And is that the amount -- does that amount represent
3 commissions you made during open enrollment?

4 A. Correct.

5 Q. So when we look at the advances, the money that was paid to
6 you in February and the money that was paid to you in March,
7 would that be the total of the amount that Mr. -- that the
8 Defendants paid to you during open enrollment?

9 A. Probably so.

10 Q. Okay. So you made -- you received about \$47,800 or so in
11 open enrollment, as far as what you were paid, 47,796; is that
12 what you understood you made?

13 A. No.

14 Q. Did you believe you made more money than 47,700 -- \$47,796
15 during open enrollment?

16 A. Yes.

17 Q. How much should you have made?

18 A. It was approximately \$54,000, and I informed Mr. Cortes
19 about that through an e-mail that I sent him.

20 Q. Now, this \$54,000, that was the money you made for which
21 months, or you should have made during which months?

22 A. During the period of open enrollment, those 54,000 are my
23 sales compared to what I received as far as deposits.

24 Q. How many weeks is open enrollment?

25 A. 13 weeks, approximately.

1 Q. So are you telling us that you would have made -- that you
2 should have received \$4,153.58 a week during open enrollment?

3 A. Well, probably. According to this calculation, yes.

4 Q. I mean, are these the calculations that you would like us
5 to use?

6 A. Yes, I have no problem with it.

7 Q. And then you said you were working about 60 hours a week?

8 A. Approximately.

9 Q. And you weren't paid hourly, were you?

10 A. Only in the beginning --

11 THE INTERPRETER: Sorry, Counsel.

12 THE WITNESS: Only at the beginning.

13 BY MR. POLLOCK:

14 Q. All right. During open enrollment, were you paid hourly?

15 A. No. During open enrollment, all the agents, we would all
16 get paid the same commissions, the same rates for everybody.

17 Q. Okay. Did you earn a bonus for open enrollment?

18 A. Yes.

19 Q. Okay. So in addition to the \$54,000 in commissions, should
20 you -- you also earned a bonus because of the number of sales
21 that you made during open enrollment; is that right?

22 A. Yes, that's correct.

23 Q. And is that the \$25,000 bonus?

24 A. I earned the bonus for the \$25,000, yes.

25 Q. So for open enrollment, what you really earned was \$54,000

1 plus the \$25,000 bonus?

2 A. I also earned two additional bonuses.

3 Q. What other bonuses did you earn?

4 A. I got the one from Bright Health, which was \$6,000, more or
5 less, and that was deposited around December the 18th,
6 approximately. And I also earned another bonus from Friday,
7 which was \$5,000, and that was deposited in May, I believe,
8 because we were still over at the Kendall location.

9 Q. Okay. The money that you earned in December, the bonus,
10 that would have been included in your W -- in your 1099 for
11 2021, would it not?

12 A. Yes, I suppose they included it as part of that.

13 Q. But we should include the \$5,000 bonus you received in May,
14 because that's the amount -- that's the bonus you earned during
15 open enrollment; is that what you are telling us?

16 A. The three bonuses, all three bonuses that I earned, I
17 earned all of them because of the sales during the open
18 enrollment period.

19 Q. Okay. So we take the 54,000 that you should have earned,
20 plus the 30,000 in bonuses, so you should have received a total
21 of \$84,000 for the -- for open enrollment for your work?

22 A. Yes.

23 Q. And you worked 13 weeks?

24 A. Correct.

25 Q. And that would have given you \$6,461.54 a week?

1 A. Okay.

2 Q. And we know you weren't paid hourly for open enrollment,
3 but we have to calculate overtime on an hourly basis, so --

4 A. Okay.

5 Q. Now, if we -- if you're already paid this --

6 MR. TROPP: Objection, Judge. Is counsel testifying
7 as to what she's owed? Can he ask her?

8 THE COURT: Is your objection to leading?

9 MR. TROPP: Yes.

10 THE COURT: Sustained.

11 BY MR. POLLOCK:

12 Q. Ms. Lopez, if you are working 60 hours a week and you told
13 us that you should have made \$6,461.54, how do we find out how
14 much you were paid per hour; do we add, do we subtract, do we
15 divide?

16 A. I don't know.

17 Q. We need to come up with an hourly rate for you in order to
18 figure out overtime, right?

19 A. Yes.

20 Q. And what you are seeking is money that you weren't paid for
21 overtime from the Defendants; is that what you are asking for
22 as part of this lawsuit?

23 A. Yes.

24 Q. And so if overtime is time and a half, then you were
25 already paid -- you are claiming, what, the half time?

1 A. Yes, whatever's owed to me.

2 Q. So whatever's owed to you would be for overtime, the other
3 half of your hourly rate what you should have been paid; is
4 that what you are asking for?

5 A. Yes, correct.

6 Q. Now, for that half that you are owed for every hour, how
7 many overtime hours a week did you work during open enrollment?
8 How many hours?

9 A. Approximately, between 15 and 20.

10 Q. So to figure out how much you are owed a week, we look at
11 the half time you are owed for each -- the overtime hours; is
12 that what you want us to do?

13 A. Okay.

14 MR. TROPP: Objection, leading and -- leading also.

15 THE COURT: Sustained.

16 BY MR. POLLOCK:

17 Q. Ms. Lopez, how should we determine -- let me ask this a
18 different way.

19 Do you know how much overtime you are owed per week
20 offhand?

21 A. Approximately, in total, it is like 16,000.

22 Q. Okay. And besides the overtime that you are owed, is there
23 other money that you believe that you are owed from the
24 Defendants?

25 A. Yes. The difference, the amount that I was not paid and

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

1 should have been paid due to the open enrollment that I sent
2 over to Mr. Cortes through e-mail.

3 Q. And how much is that?

4 A. I think it was 5700, approximately.

5 Q. Is there any other money that you believe that Defendants
6 owe you from your employment with them?

7 A. Yes. There's also a balance of approximately \$10,000 from
8 commissions outside the open enrollment period.

9 Q. So how much are you -- how much are you asking the jury to
10 award you for the wages that you earned for your employment
11 with the Defendants for overtime, the commissions that weren't
12 paid to you during open enrollment and the commissions that you
13 earned after open enrollment?

14 A. Approximately 31,000.

15 MR. POLLOCK: Nothing further from this witness, Your
16 Honor.

17 Thank you, Mariana.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MR. TROPP:

21 Q. Hi, Mariana Lopez. How are you?

22 A. Good afternoon, Mr. Tropp.

23 Q. Okay. So when you first started working, you were paid
24 \$600 just to study to get the license, right?

25 A. Correct.

1 Q. And then you were told the other agents had the opportunity
2 starting out to get \$20 an hour, you would get a lesser
3 commission?

4 A. Correct.

5 THE COURT REPORTER: Mr. Tropp, is your microphone on?

6 (Pause in proceedings.)

7 BY MR. TROPP:

8 Q. So you, yourself, approached Reinier Cortes and said, You
9 don't have to pay me the \$20 anymore, and you were able to get
10 a higher commission, up to, like, \$35 per policy, correct?

11 A. No. Those \$35 were after open enrollment. When open
12 enrollment began.

13 Q. When you stopped getting the \$20, your commission went up?

14 A. Starting November 1st, with open enrollment.

15 Q. Okay. And when did you start?

16 A. Well, I got my license on October the 8th, and I got my
17 first sale -- sorry, October the 11th.

18 Q. And you started selling, like, after a day of training?

19 A. I started selling the same day.

20 Q. And so you started around October, and then the national
21 registration was November?

22 A. It was on November the 1st, but we started selling for the
23 open enrollment approximately in October the 26th.

24 Q. Okay. And how many hours a week did you say earlier that
25 you worked for that national registration period?

1 A. Most of the time I would work for the entire time there,
2 from 9:00 to 9:00, with some few exceptions.

3 Q. So how many hours, how many days a week? 12 hours a day?

4 A. I was working Monday through Fridays.

5 Q. So, um, that's how many hours, 62? 62 hours for that week?

6 A. 60, tops.

7 MR. TROPP: One second, please.

8 (Pause in proceedings.)

9 THE COURT: Are you done with the Plaintiff,
10 Mr. Tropp?

11 MR. TROPP: I just need about 30 seconds. Almost
12 there, Judge. Sorry.

13 (Pause in proceedings.)

14 MR. TROPP: Let me move on and come back to that.

15 BY MR. TROPP:

16 Q. Okay. Did you ever -- if you ever wanted to not show up or
17 report to work, you were able to work from home, if you wanted
18 to?

19 A. No.

20 Q. You were not allowed?

21 A. It was only when I got COVID that Mr. Cortes authorized me
22 to.

23 Q. And did you ever ask any other time if you could work from
24 home or not have to show up?

25 A. Well, when I was first there, when I first started there, I

1 realized that there was a lot of -- in the chat, I could see
2 there was a lot of work, things were very fluid, and I asked
3 Andrea if I could help out from home, and she said to me, No,
4 you cannot because there's a lot of confidential information.

5 Q. Okay. Now, in 2022, did you work for yourself as a -- as
6 an independent insurance agent?

7 A. You mean at Avant's office?

8 Q. Yeah, besides Avant's office.

9 A. Well, after I resigned.

10 Q. And how about before you resigned?

11 A. Only at Mr. Cortes's office. I always worked at Cortes's
12 office.

13 Q. What -- when did you start working -- did you ever work for
14 Carlos Lopez Alcala P.A.?

15 A. I didn't work for him. He is my relative. We worked
16 together within the same company, but not that he was my
17 employer.

18 Q. And when did you start working -- when did you work for or
19 with Carlos Lopez Alcala P.A.?

20 A. Approximately in --

21 THE COURT REPORTER: I'm sorry, what was the answer
22 again?

23 THE INTERPRETER: Approximately in August of 2022.

24 MR. TROPP: Your Honor, I am going to move fast
25 through this witness. If you could just give me just 25

1 seconds to find something, if I could.

2 THE COURT: Yes.

3 MR. TROPP: Thank you.

4 (Pause in proceedings.)

5 BY MR. TROPP:

6 Q. Okay. When you -- when you started working for Avant, were
7 you an independent contractor?

8 A. Well, that's what they told me at the end of the period.

9 Q. Well, what about in the beginning, did you consider
10 yourself an independent contractor?

11 MR. POLLOCK: Objection, Your Honor, we have a motion
12 *in limine* on this issue.

13 THE COURT: Sustained.

14 BY MR. TROPP:

15 Q. Now, aside from the \$20 an hour from the beginning, did you
16 ever discuss overtime, or was that ever part of any agreement
17 with -- with Avant or Reinier?

18 A. No. And back then, I would leave at 5:30 p.m.

19 Q. But your answer is no, there was no overtime discussion or
20 promise?

21 A. No.

22 Q. Suprani LLC, that was your company?

23 A. Correct.

24 Q. And did Suprani LLC have its own insurance license as you
25 put your insurance license with Suprani LLC?

1 A. Yes. Mr. Cortes helped me out to get that processed.

2 Q. How does that work? How does it work to put your insurance
3 license with this Suprani company?

4 A. I have no clue. You would have to ask Mr. Cortes about
5 that. He's the one that did it.

6 Q. But it was your company?

7 A. Yes, but I just gave him the information and he handled the
8 rest.

9 Q. So do you take any responsibility for how your license or
10 your company is? You are blaming that also on Mr. Cortes?

11 A. I trusted in that he knew how all -- how these agencies
12 work. So I just gave him the information, provided the data,
13 he filled it out and then I got an e-mail saying that the
14 registration had been accepted and then I forwarded that e-mail
15 to him. That was it.

16 Q. Okay. And how about Suprani LLC, did you file that as
17 self-employed or your own business? Like when you did your
18 taxes, did you say you were an employee for Suprani LLC?

19 A. Well, before I had never worked for Suprani LLC.

20 Q. When did you start working for Suprani LLC?

21 A. I started getting paid by Suprani LLC in March of 2022.

22 Q. March. You left -- you stopped working around July of
23 2022, July or August?

24 A. In July of 2022.

25 Q. So April, May, June, July, so about five months you --

1 okay. Thank you.

2 THE INTERPRETER: The interpreter would like to make a
3 correction for the record, Your Honor.

4 THE COURT: Yes.

5 THE INTERPRETER: The prior answer that I translated
6 as, I started getting paid by Suprani LLC at around March. It
7 should have been properly interpreted as, I started getting
8 paid through Suprani LLC around March. I made an interpreter
9 notation.

10 THE COURT: Thank you.

11 MR. POLLOCK: Your Honor, I object. Is counsel trying
12 to introduce a deposition into evidence that --

13 THE COURT: I don't know. All we have is the front
14 page, so let's see where we go from here.

15 Your next question, please.

16 BY MR. TROPP:

17 Q. Okay. Do you remember, Ms. Lopez, coming to -- I mean,
18 having your deposition where I asked you some questions?

19 A. Yes, I remember.

20 Q. And were you -- do you remember you were under oath during
21 the deposition, and you were informed that you had to tell the
22 truth?

23 A. Yes, I remember.

24 Q. Okay.

25 MR. POLLOCK: Your Honor, can we take down the

1 deposition transcript from the monitors? I don't believe it is
2 in evidence.

3 THE COURT: The deposition of a party can be used for
4 any purpose, not just impeachment.

5 MR. POLLOCK: It can be read, but not -- there wasn't
6 any designations that were filed.

7 THE COURT: Why don't you -- Mr. Tropp, why don't you
8 speak to Plaintiffs' counsel.

9 You can have a conversation, see if there's still an
10 issue.

11 (Pause in proceedings.)

12 MR. POLLOCK: So, Your Honor, it appears that Counsel
13 is not seeking to introduce testimony, he is seeking to
14 cross-examine. And if that's the case, this would be
15 improper -- his seeking impeachment, would be improper
16 impeachment.

17 THE COURT: Right, then it's not proper impeachment,
18 correct. Sustained.

19 MR. TROPP: I will re-ask the question, if I could.

20 THE COURT: Well, you never asked a question.

21 MR. TROPP: Okay.

22 THE COURT: You never obtained a response that you
23 would then seek to impeach with prior inconsistent testimony.
24 You only asked if she remembered being deposed and swearing to
25 tell the truth.

1 (Pause in proceedings.)

2 MR. TROPP: Okay.

3 BY MR. TROPP:

4 Q. During -- I asked you earlier, during the national
5 registration period, you -- you -- you enrolled about 1800
6 people, correct?

7 A. Yes, you did ask me in the deposition.

8 Q. And today you are saying that you, during that period,
9 worked 12 hours a day, five days a week, over 60 hours?

10 A. Approximately so.

11 Q. Okay. And when you came -- when you had your deposition
12 and I asked you how many hours a week did you work, did you
13 remember what -- the answer that you gave?

14 A. I think my answer was between 40 and 60.

15 Q. Okay.

16 MR. TROPP: Judge, if I may, I would like to impeach
17 the witness with -- may I read what she actually said?

18 THE COURT: I'm not sure what you are asking me to do,
19 Mr. Tropp.

20 MR. TROPP: All right.

21 THE COURT: Ask your next question.

22 BY MR. TROPP:

23 Q. At your deposition when I asked you, "So from September --

24 THE COURT: Line and page, please?

25 MR. TROPP: Yes, Judge. I'm sorry.

1 (Pause in proceedings.)

2 MR. TROPP: Page 12, Line 15. Sorry, question's on
3 Page 13 -- Page 12, Line 13.

4 BY MR. TROPP:

5 Q. So in September, I asked at your deposition:

6 "In September when you started, you were getting paid
7 600 a week. Do you know how many hours a week you worked
8 during that period?

9 "Yes.

10 "How many?

11 "40.

12 And then I asked you,

13 "QUESTION: Did you -- all of those 40 hours at the
14 location at Avant Assurance?"

15 And you said, "Yes."

16 And then I asked you: "Let me make sure I do the math
17 right. Hold on. 40 times 20 is 800 a week, right?"

18 Do you remember answering that?

19 A. Yes, I remember.

20 Q. Your answer would be 40 hours a week, that you worked 40
21 hours during the national period?

22 MR. POLLOCK: Objection, Your Honor, that's
23 mischaracterizing testimony that my client gave in deposition.

24 THE COURT: How so? I don't know. I don't have the
25 deposition in front of me. Nobody has given it to me, and I

1 don't know how it -- if it's being read incorrectly.

2 MR. POLLOCK: I wasn't saying it was being read
3 incorrectly. I'm saying that's a mischaracterization of the
4 testimony that my client gave in deposition that she worked
5 only 40 hours.

6 THE COURT: I don't know. He just read it. So if you
7 have a different answer, if you want to have him read, direct
8 Mr. Tropp to read the remaining question and answer.

9 MR. POLLOCK: I will just take it up on redirect.

10 BY MR. TROPP:

11 Q. I will ask you a question to clear it up. Now, on Page 12.

12 So during the national registration period, you had -- you
13 had approximately 1800 members you signed up?

14 A. Are you reading that, or is that a question you are asking
15 me now?

16 Q. I'm asking you now.

17 A. Yes, that's correct.

18 Q. Also, earlier...

19 (Pause in proceedings.)

20 THE COURT: I'm sorry, we need to move this along,
21 Mr. Tropp.

22 (Pause in proceedings.)

23 BY MR. TROPP:

24 Q. So, um, I -- I asked you, um, when you started working for
25 Avant and were you working for yourself as an insurance agent,

1 an independent insurance agent, what was your answer on that,
2 or what is your answer on that?

3 MR. POLLOCK: Objection, Your Honor, that seems to be
4 improper impeachment. I don't know what he is impeaching or
5 what he is asking.

6 MR. TROPP: I'm asking her now what her -- I'm asking
7 the question now which -- did she hold herself out to be an
8 independent insurance agent.

9 MR. POLLOCK: The objection would be when.

10 THE COURT: Overruled, if she understands the
11 question.

12 THE WITNESS: Can you re-ask the question, because I
13 did not understand it.

14 BY MR. TROPP:

15 Q. Were you -- did you hold -- were you an independent sales
16 agent when you started working for Avant?

17 A. No, I would not hold myself out as anyone. I was a health
18 agent.

19 (Pause in proceedings.)

20 THE COURT: Mr. Tropp, now is not the time to have us
21 all waiting here while you read through a deposition, sir.

22 MR. TROPP: Okay.

23 THE COURT: Please, let's move this along.

24 BY MR. TROPP:

25 Q. So for -- for 2022, you had \$60,000 paid to you -- paid to

1 your company, Suprani?

2 A. Yes, that's the amount I received.

3 Q. And for 2021, you were paid \$18,000 in commissions for
4 2021?

5 A. No. I received a 1099 for 23,000.

6 Q. And then for 2022, 80,000?

7 A. 60,000.

8 Q. Did you receive a 1099 that you were -- that you were paid
9 80,000 for 2022?

10 A. You asked me about the 1099 for Suprani LLC, and the 1099
11 for Suprani LLC was 60,000, not 80,000.

12 Q. Okay. And then how much were you -- how much did you
13 receive in 2022?

14 A. Approximately 25,000.

15 Q. Wait. In 2022, you only received how much?

16 A. As Mariana individual, 25,000.

17 Q. So 25,000 for Mariana and 60,000 to your company?

18 A. Exactly.

19 Q. Now, in 2021, would you agree that all your commissions
20 were paid for 2021?

21 A. No. That was for a period of open enrollment, and
22 Mr. Cortes received an e-mail from me where I break down for
23 him the numbers of the members that I had registered that were
24 missing where I did not receive commission payments.

25 Q. We are talking about 2021?

1 A. Yes, that's correct.

2 (Pause in proceedings.)

3 BY MR. TROPP:

4 Q. So at the deposition when you came to my office -- I mean,
5 when we had your deposition, I'd asked for the total amount
6 of --

7 THE COURT: Page and line?

8 MR. TROPP: Page 42, Line 13.

9 (Pause in proceedings.)

10 MR. TROPP: Okay. I'm sorry, this is Page 44, Line
11 12.

12 "For 2021, how much did you think you were supposed to
13 receive from Avant? How much did they owe you? And we
14 clarified that they paid you everything for 2021, right, for
15 the commissions?"

16 And your answer was: "The commissions were all paid
17 in full for 2021."

18 THE WITNESS: Well, I probably didn't remember back
19 then, but I do have the e-mail that I sent over to Mr. Cortes,
20 dated February the 24th, if I'm not mistaken.

21 BY MR. TROPP:

22 Q. When you said that all the commissions were paid to you for
23 2021, were you being truthful then or mistaken, or were you
24 being untruthful?

25 A. It's not that I was being untruthful. It's that I probably

1 had not remembered at that moment in time the e-mail that I had
2 sent Mr. Cortes.

3 Q. Okay. I will get to that.

4 And the \$25,000 bonus for July 2022, did you receive that?

5 A. Yes, I did receive it.

6 Q. Okay. Earlier you said -- would you agree or disagree that
7 Andrea was there to help you while you were working at Avant?

8 A. Not just for me, but for all the staff that was working in
9 the office.

10 Q. So she did help you?

11 A. Yes, that's correct.

12 Q. And she didn't control you?

13 A. No, she didn't control us. She would supervise us.

14 Q. Okay. And then when you had -- after you had your
15 training, would you agree that you developed your own sales
16 technique on how to make sales?

17 A. Well, every one of us would say basically the same thing,
18 because we were all selling the same products.

19 Q. Okay.

20 (Pause in proceedings.)

21 THE COURT: Are you done with your cross, Mr. Tropp?

22 MR. TROPP: Almost done, Judge.

23 BY MR. TROPP:

24 Q. Okay. I asked you earlier when you started working for
25 Avant, you understood that you would be an independent

1 contractor. Would you agree that that was the case?

2 A. At that point in time, we didn't talk about what we were
3 going to be, if we were going to be anything. We were just
4 simply insurance agents working from an office.

5 Q. Again, do you recall when you -- I took your deposition?

6 A. Yes, but I don't remember every question you asked me, not
7 memorized.

8 Q. But do you remember that you were under oath to tell the
9 truth when you took that deposition?

10 A. Yes, correct.

11 Q. Like you are here today?

12 A. Yes, that's correct.

13 Q. I would like just to point out on Page 22, and I asked you:
14 "When you started working, working for Avant Assurance,
15 were you an independent contractor?"

16 And your answer was, "Yes."

17 A. Because that's the form that we received, but we never
18 talked about it, on about whether we're going to be -- we're
19 going to contractors or not. I was just simply working from an
20 office, inside an office.

21 MR. TROPP: I will wrap this up in less than five
22 minutes.

23 (Pause in proceedings.)

24 MR. TROPP: Can you turn this back on?

25 MR. POLLOCK: Your Honor, I am going to object to this

1 document, which not in evidence. Can we shut the ELMO off?

2 It's not in evidence.

3 MR. TROPP: It is a statement in the case.

4 THE COURT: That's not in evidence, Mr. Tropp. You
5 don't show the jury items that are not in evidence, unless it
6 is a demonstrative, and that is not demonstrative.

7 BY MR. TROPP:

8 Q. How much are you saying that you are owed by Avant today?

9 A. Approximately 31,000.

10 Q. Before today, have you ever told anyone or said that you
11 were owed -- what did you say, almost -- was it 30-something
12 thousand?

13 A. Mr. Cortes did receive the e-mail with the balance owed for
14 my commissions, and that is part of those 31,000.

15 Q. Did you have a copy -- did you ever -- do you have a copy
16 of that e-mail?

17 A. My attorney has it. And I am sure Mr. Cortes also has it
18 in his inbox, and I have it in my outbox, as well, in my sent
19 e-mail folder.

20 Q. You're saying your attorney has a copy of an e-mail where
21 you asked for \$36,000?

22 THE INTERPRETER: \$3600?

23 THE WITNESS: No, Mr. Tropp. What my attorney has is
24 an e-mail that I sent to Mr. Cortes of the balance owed of my
25 commissions.

1 BY MR. TROPP:

2 Q. Have we seen that e-mail today?

3 A. No, I don't know if your client has showed it to you, but I
4 did show it to my attorney.

5 Q. And in this e-mail, does it specify the amount that you are
6 claiming was owed to you?

7 A. Yes, the pending commissions not yet received for the open
8 enrollment period.

9 Q. And that amount is how much again?

10 MR. POLLOCK: Asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: If I'm not mistaken, it was 5700.

13 MR. TROPP: 5700.

14 BY MR. TROPP:

15 Q. That's what the e-mail says?

16 A. Yes, Mr. Tropp, that we are talking about the commissions
17 for the open enrollment.

18 Q. And that's included in this e-mail?

19 A. Only the commissions regarding the open enrollment, that's
20 correct.

21 Q. And what about the other -- what about the other 25,000
22 plus?

23 A. That is -- that is nowhere in any e-mail.

24 Q. That's not in the e-mail?

25 A. No, it is not in the e-mail.

1 Q. Okay. So is it fair to say that you had sent some e-mail
2 to Reinier saying he -- you're owed or asking for something
3 about 5,000, more or less, in commissions?

4 A. Correct.

5 Q. But the reason why we haven't seen that e-mail yet is
6 because you gave it to your lawyer?

7 A. That was an e-mail that I sent from my personal e-mail
8 address to the e-mail address of Reinier Cortes before I
9 resigned from my job at the office.

10 Q. But you are also blaming Reinier for us not seeing that
11 e-mail?

12 A. No, I'm not blaming him. I do not know what it is that
13 Mr. Cortes produces to you, but I can only speak about what I
14 have produced to my attorney.

15 MR. TROPP: Well, how about we clear this up. Is
16 there any way we can see this e-mail? We have never seen any
17 e-mail.

18 THE COURT: This is not discovery, this is trial,
19 Mr. Tropp. Any other questions for the witness?

20 BY MR. TROPP:

21 Q. If you ever asked or if you wanted to know if commissions
22 were paid to you and you asked Reinier, wouldn't -- wouldn't he
23 send you e-mails, or did you ever get e-mails with Excel
24 statements?

25 MR. POLLOCK: Objection, compound.

1 THE COURT: Overruled.

2 THE WITNESS: Well, when we would receive the
3 payments, it would come along with the statement of what was
4 being paid, but we didn't get a statement of what wasn't being
5 paid to us.

6 BY MR. TROPP:

7 Q. Okay. And when you would get those statements, you would
8 take pictures of them?

9 A. No, it wasn't necessary to take pictures of them. They
10 were in our inboxes.

11 MR. TROPP: That's all I have, Judge.

12 THE COURT: Thank you. Redirect?

13 REDIRECT EXAMINATION

14 BY MR. POLLOCK:

15 Q. Ms. Lopez, did you file your taxes based on the tax
16 reporting documents, the 1099s that were issued to you and to
17 your Suprani Services?

18 A. Yes, that's correct.

19 Q. And as far as knowing exactly when you worked, were there
20 -- did Avant have in place a way for you clock in and clock out
21 of work?

22 A. No, we did not have that.

23 Q. And if you had time records, would you be able to be more
24 exact about how many hours you worked during the open
25 enrollment period?

1 A. Sorry, when you mean if I had time records, are you
2 referring to if Mr. Cortes had them?

3 Q. I am saying if Avant had a way for you to clock in and
4 clock out, would that help us determine exactly how many hours
5 you worked?

6 A. Of course.

7 Q. Sitting here today, do you -- let's see.

8 MR. POLLOCK: I have nothing further.

9 THE COURT: Thank you, ma'am. You may step down.

10 MR. POLLOCK: Can we get a comfort break, Your Honor,
11 or no?

12 THE COURT: No. We will break at 3:30. Your next
13 witness?

14 MR. CUMMINGS: Plaintiff calls next Rafaela Valiente.

15 THE COURT: Please approach.

16 Please raise your right hand.

17 (Time 3:15 p.m.)

18 RAFAELA VALIENTE,

19 a witness for Plaintiff, testified as follows:

20 THE WITNESS: Yes.

21 THE COURT: Please be seated.

22 DIRECT EXAMINATION

23 BY MR. CUMMINGS:

24 Q. Good afternoon, Ms. Valiente.

25 A. Good afternoon.

1 Q. Ms. Valiente, could you please state your full name?

2 A. Rafaela Valiente Leon.

3 Q. And where are you born?

4 A. In Cuba.

5 Q. How long did you live in Cuba?

6 A. Up until 2010.

7 Q. Did you move directly to Miami in 2010?

8 A. Yes.

9 Q. How did you find out about the Avant Assurance agency?

10 A. Through an acquaintance in common, in common between
11 Mr. Reinier and myself.

12 Q. And what year did you find out about Avant?

13 A. 2020.

14 Q. Did you already have an insurance license in 2020?

15 A. Yes. I had it since 2019.

16 Q. Did you have to interview for your job at Avant?

17 A. Oh, yes. I did go over there, yes.

18 Q. Who did you interview with?

19 A. Mr. Reinier.

20 Q. And where did you meet Mr. Reinier?

21 A. At the office that was in Kendall.

22 Q. When you interviewed, were you hired on the spot?

23 A. Yes.

24 Q. And did you interview with anybody else on that day when
25 you met with Mr. Cortes?

1 A. No.

2 Q. Did you ever sign a written employment agreement or a
3 written contract before -- sorry, before you started working at
4 Avant?

5 A. No.

6 Q. Did you ever sign any written contract or agreement while
7 you were working at Avant?

8 A. No. The only document I did fill out was a W-9.

9 Q. On the day that you met and interviewed with Mr. Cortes,
10 did you meet anybody else at Avant that day?

11 A. I met the other people that were working at the office.

12 Q. Do you remember who they were?

13 A. Well, Delio Batista was there, Andrea Quintero was there
14 and there were two other people whose names I don't remember
15 because they worked at the office for a very short time.

16 MR. CUETO: Excuse me, may Mr. Cortes be excused to
17 the restroom?

18 BY MR. CUMMINGS:

19 Q. When you met Andrea Quintero the day you interviewed, what
20 was her role at Avant at that time?

21 A. Well, that specific day that I went there, I don't know
22 what functions or duties she had at that particular moment.

23 Q. And the other two people that you mentioned meeting, what
24 were they doing at Avant?

25 A. They were also health insurance sales people.

1 Q. Now, during your interview, did you discuss how you would
2 be paid?

3 A. Yes.

4 Q. What was your understanding of how you would be paid while
5 working for Avant?

6 A. Well, during the interview, as per what Reinier explained
7 to me, he said that they were looking for agents to help out
8 during the open enrollment period and that they were going to
9 pay \$10 for each registered member.

10 Q. And when you first started working for Avant, how often
11 would you receive that \$10 payment for selling a health
12 insurance policy?

13 A. During that entire period, I didn't collect any.

14 Q. And when you say during that period, you mean during the
15 open enrollment period?

16 A. All October, November and December, I did not receive any
17 salary.

18 Q. And were you expecting not to receive any salary during
19 opening enrollment period?

20 A. Yes, because normally those companies start paying starting
21 in February.

22 Q. So that payment arrangement wasn't unusual to you?

23 A. It was not.

24 Q. However, what was your understanding of how you would be
25 paid for the policies you sold during the open enrollment

1 period after it ended?

2 A. \$10 per each member.

3 Q. Right. And so, for example, did the open enrollment period
4 end in January?

5 A. That's correct.

6 Q. And if you sold a policy during the open enrollment period,
7 did you receive \$10 for selling that policy?

8 A. No. Different companies start paying beginning February.
9 So I was supposedly gonna be -- was going to be paid eventually
10 once the companies would pay in turn.

11 Q. If you sold a policy and you got paid in February, you were
12 paid \$10, did you also receive payment for that same policy in
13 March?

14 A. Not initially, because I was only going to work for the
15 registration period.

16 Q. And that was your initial agreement with Mr. Cortes?

17 A. Correct.

18 Q. What happened at the end of the enrollment period; did you
19 have another conversation about your working arrangement?

20 A. Yes. Once the open enrollment ended, I was without work
21 for several days. And after that, I went over to the office to
22 see if they had my money, and that's when Mr. Reinier proposed
23 that I should stay there working for him at the office.

24 Q. And at that time, did a new payment arrangement -- was a
25 new payment arrangement discussed?

1 A. I would still get paid the same amount, \$10 for every
2 member that I would register.

3 Q. And now, once you came back to Avant -- which month was
4 that, by the way?

5 A. End of -- beginning of February.

6 Q. So if you sold a policy in February, you received \$10 for
7 that member, correct?

8 A. Yes. Every month. So that was our initial agreement. It
9 was going to be \$10 per each member every month.

10 Q. Got it. Meaning -- so now if you sold a policy to member X
11 in February, then you would also receive \$10 for that same
12 policy in March?

13 A. Correct.

14 Q. And then in April for that same number X, you would receive
15 another \$10?

16 A. Correct. But then it changed in April.

17 Q. Okay. And that would have been April of 2021?

18 A. Correct.

19 Q. During your interview back in -- I'm sorry.

20 When did you start working at Avant?

21 A. More or less, the 15th or 16th of October.

22 Q. 2020?

23 A. Yes, correct.

24 Q. And that's when you interviewed also, in 2020, with

25 Mr. Cortes?

1 A. Yes.

2 Q. Did you discuss what your work schedule would be in that
3 interview?

4 A. During that time, the office was open -- would work from
5 11:00 to 8:00.

6 Q. 11:00 in the morning to 8 p.m.?

7 A. Correct.

8 Q. Did you receive any training to work at Avant?

9 A. Yes.

10 Q. Who trained you?

11 A. Andrea Quintero did.

12 Q. Okay. And what kind of training were you given?

13 A. She showed me what systems they used to work with and how
14 to record the sales in that Excel sheet that they had created.
15 There was a small training regarding the phone calls; whenever
16 a phone call from a client would come in, on how to offer the
17 different plans to them.

18 Q. Did you ever work from home during the time you were
19 employed at Avant?

20 A. No, never.

21 Q. So you always worked in the office?

22 A. Yes.

23 Q. Did you ever request to work from home while you were
24 employed at Avant?

25 A. I did.

1 Q. How many times did you request to work from home?

2 A. Once during COVID. I was infected with COVID, sick with
3 COVID for three weeks, and I asked for permission for me to be
4 able to access the system from home during that time.

5 Q. Who did you ask permission from?

6 A. Mr. Reinier. He was the one that was supposed to give me
7 access.

8 Q. So you had COVID, you went to Mr. Cortes and you asked him
9 could you work from home. What was his response?

10 A. He said no.

11 Q. Did Mr. Cortes explain why you could not work from home
12 while you had COVID?

13 A. No. At that moment what he told me was that if he would
14 authorize me to work from home, then every other agent would
15 also want to work from home in turn.

16 Q. And about what time period was this when you contracted
17 COVID and asked to work from home?

18 A. Well, I got COVID, like, in 2022, like in February or March
19 of 2022.

20 THE COURT: Is this a good time to break? Okay.

21 Ladies and gentlemen, we will take a ten-minute
22 afternoon recess. Please don't discuss the case.

23 COURT SECURITY OFFICER: All rise for the jury.

24 (The jury exited the courtroom at 3:31 p.m.)

25 THE COURT: We're in recess.

1 (Witness temporarily excused.)

2 (A recess was taken from 3:31 p.m. to 3:44 p.m.)

3 COURT SECURITY OFFICER: All rise for the jury.

4 (The jury entered the courtroom at 3:44 p.m.)

5 THE COURT: Everyone, please be seated.

6 Please continue.

7 DIRECT EXAMINATION (Cont'd.)

8 BY MR. CUMMINGS:

9 Q. Okay. Ms. Valiente, when we left off, you mentioned that
10 Mr. Cortes did not allow you to work from home when you got
11 COVID, correct?

12 A. Correct.

13 Q. And so did you stay at home because you were not allowed to
14 work in the office?

15 A. Correct.

16 Q. Actually, let me ask this the other way around. Did you go
17 into the office with COVID?

18 A. No. I was the one that decided to stay home.

19 Q. Because you don't want to get other people sick with COVID
20 in the office, correct?

21 A. Yes.

22 THE COURT: The microphone is not on.

23 BY MR. CUMMINGS:

24 Q. Was it your understanding that Mr. Cortes would have
25 allowed you to work in the office to continue selling insurance

1 even with COVID?

2 A. Well, there were some people that during COVID had some
3 symptoms, had fever, and they were still going into the office.

4 Q. Now -- so you stayed home?

5 A. Yes.

6 Q. How long did you stay home?

7 A. For three weeks.

8 Q. Did you sell any insurance for Avant at that time?

9 A. No.

10 Q. Did you have a computer at home to sell insurance?

11 A. Yes.

12 Q. Could you have put the CRM software on your computer at
13 home?

14 A. Perfectly well.

15 Q. Did you have a headset that you could use to receive calls?

16 A. Yes.

17 Q. So you had everything you needed at home to continue
18 selling insurance for Avant, correct?

19 A. Correct.

20 Q. Did you ask Reinier Cortes to allow you to work from home
21 using your equipment?

22 A. Yes.

23 Q. And what was his response?

24 A. He said no.

25 Q. At some point not related to the COVID situation we are

1 talking about now, but at some point did Mr. Cortes arrange for
2 you to -- arrange transportation from your house to the Avant
3 office?

4 A. Yes.

5 Q. Okay. And what kind of transportation did he arrange for
6 you?

7 A. Uber.

8 Q. Why? Why did Mr. Cortes have a Uber pick you up from your
9 house and brought to the Avant office?

10 A. Because I had an accident, a car accident in my car coming
11 back home from work, and my car ended up being unusable.

12 Q. Okay. When was this?

13 A. End of October, early November of '22.

14 Q. '22?

15 A. Yes.

16 Q. Would you have still been working for Avant in 2000 --
17 November 2022?

18 A. Oh, I apologize. It was '21.

19 Q. Okay. Thank you.

20 Now, you got into a car accident and your car was unusable,
21 correct?

22 A. Correct, sir.

23 Q. Would you have preferred to stay at home and continue
24 selling insurance policies?

25 A. Of course.

1 Q. Did you ask Mr. Cortes if you could stay at home because
2 your car was not working?

3 A. No.

4 Q. However, once he found out that you did not have a car to
5 use, he arranged for Uber to come pick you up and bring you to
6 the office?

7 A. Correct.

8 Q. And how long did that go on?

9 A. That was for two days.

10 Q. Okay. Okay. Ms. Valiente, I am presenting on the screen
11 which has already been in evidence as Exhibit 20.

12 (Plaintiffs' Exhibit No. 20 was identified.)

13 BY MR. POLLOCK:

14 Q. Have you seen this?

15 A. Yes.

16 Q. And when you worked at -- what was your e-mail address that
17 you used for communications with -- when you worked at Avant
18 Assurance?

19 A. My e-mail address?

20 Q. E-mail address.

21 A. It was my personal e-mail, RafaelaValiente@Gmail.com.

22 Q. Okay. So could you please read this e-mail that we see
23 here?

24 A. "Ray, on Monday, September the 13th, I have an appointment
25 for my citizenship. On Wednesday, the 15th of September, I

1 have surgery, seven days of rehab."

2 Q. And Ray is who?

3 A. Reinier Cortes.

4 Q. What was the purpose of this e-mail?

5 A. I was informing him that I wasn't going to be attending,
6 that I was going to be away from the office at that time.

7 Q. And why did you need to tell Mr. Cortes that you would be
8 out of work during those times?

9 A. Well, it's a matter of being responsible at work.

10 Q. Could you have just not shown up to work at the Avant
11 office on September 13th?

12 A. Well, I could have done it, but then, you know, I could
13 have also run the risk.

14 Q. The risk of what?

15 A. That I would no longer be able to work there, that they
16 would just, you know, close my contract. I wouldn't be able to
17 work with them any longer.

18 Q. Now, you previously, I believe, heard Mr. Cortes say that
19 several insurance agents at Avant brought their own equipment
20 to work, correct?

21 A. I didn't understand it, because when he was testifying, it
22 was all in English.

23 Q. Okay. All right. So let me ask you this: Did you ever
24 bring any of your own equipment to the Avant office?

25 A. Never.

1 Q. Did you bring a headset?

2 A. No.

3 Q. Did you bring a mouse?

4 A. No.

5 Q. Did you bring a keyboard?

6 A. No.

7 Q. So all of the equipment that you used at Avant was provided
8 by Avant, right?

9 A. Correct.

10 Q. And you previously testified that your -- you began working
11 during -- at Avant during the 2020 to 2021 open enrollment
12 period?

13 A. Correct.

14 Q. When did that open enrollment period start?

15 A. More or less on the 25th or 26th of October.

16 Q. 2020?

17 A. Correct.

18 Q. And when did that open enrollment period end?

19 A. On January the 31st of 2021.

20 Q. Now, during the open enrollment period, what hours were you
21 working at Avant's office?

22 A. Once the open enrollment period actually started, I was
23 there from 9 a.m. to 9 p.m.

24 Q. Now, those hours, 9 a.m. to 9 p.m., were those hours that
25 you set for yourself to work?

1 A. Well, Reinier was the one that addressed us. He stood in
2 the middle of the room in front of everybody of us that were
3 there and he said that during this open enrollment period, to
4 be able to take better advantage of daylight, we were going to
5 work during that schedule.

6 Q. Now, when you say us, what other insurance agents were
7 working at Avant during that 2020 to '21 open enrollment
8 period?

9 A. It was Delio, Andrea and -- well, and then it was us.
10 Because there was another agent that would come in to work in
11 the afternoons, that was Harris and also another agent, her
12 name was Mary Lou, she would also come in the afternoons.

13 Q. Now, during the first two months of that open enrollment
14 period, November and December of 2020, how many policies did
15 you sell?

16 A. Well, I registered more than 600 members.

17 Q. And when you were finally paid for those first two months
18 of the open enrollment period, how much money were you paid for
19 selling those over 600 policies?

20 A. \$2800.

21 Q. How much money did you expect to receive for selling over
22 600 policies?

23 A. Over 6,000.

24 Q. And that's because you received \$10 for every member that
25 you sold?

1 A. Correct.

2 Q. So if you sold over 600, then you should have received over
3 \$6,000?

4 A. Correct.

5 Q. Did Mr. Cortes explain why you were receiving so much less
6 money than the 6,000 you expected?

7 A. He told me that the rest of the clients I had registered
8 had not verified or qualified their IDs.

9 Q. So, in essence, he was saying over 320 people did not
10 qualify for the health insurance that you sold to them?

11 A. Correct.

12 Q. And did Mr. Cortes show you any proof that these 320 people
13 did not qualify for health insurance?

14 A. No, only his word.

15 Q. And did he tell you to call all 320 of those people that
16 apparently did not qualify for health insurance?

17 A. No.

18 Q. And the \$2800 that you did receive, when did you actually
19 receive that money?

20 A. He had given me an advance of \$1500 in January, and then in
21 February when they started paying out, he started deducting
22 from that.

23 Q. And so did you receive the majority of the money in
24 February?

25 A. Yes.

1 Q. Okay. Or are you saying that you received \$1500 in January
2 and then you received \$1300 in February?

3 A. Yes.

4 Q. And is that all the money that you received for that open
5 enrollment period?

6 A. Yes.

7 Q. You heard -- this morning you heard Alix Ledesma explain
8 that she would receive monthly commission statements of the
9 money that Avant paid to her, correct?

10 A. Correct.

11 Q. And did Avant also e-mail you monthly commission
12 statements?

13 A. What they were paying me, yes.

14 Q. And just to be clear, the statements that you received from
15 Avant just showed how much money they were paying you for
16 selling insurance policies, correct?

17 A. Correct.

18 Q. Those commission statements did not reflect how much you
19 thought you should be paid based on the number of policies that
20 you actually sold?

21 A. Correct.

22 Q. Now, were you able to keep the commission statements that
23 you received from Avant and from the open enrollment period?

24 A. Yes.

25 Q. Because those e-mails -- I'm sorry, those commission

1 statements were e-mailed to you?

2 A. That's correct.

3 Q. Where did those e-mails come from?

4 A. First from -- at first, it was from Advance Assurance, from
5 Reinier Cortes, and then it came over from the accounts
6 account.

7 Q. Do you mean something like accounting, the accounting
8 department?

9 A. Yes.

10 Q. Was it an e-mail that said accounting@AvantAssurance.com?

11 A. That's correct.

12 Q. And the commission statements that you received -- can you
13 see my screen right now?

14 A. You want me to open it?

15 Q. No, no, no. You can't open it. I am just asking, do you
16 see the screen?

17 A. I can.

18 Q. And do you recognize the documents that you see there in
19 that folder?

20 A. Yes.

21 Q. Are these examples of the commission statements that you
22 received from the Avant -- from the
23 accounting@AvantAssurance.com e-mail?

24 A. That's correct, yes.

25 MR. CUMMINGS: Okay. And all of these individual

1 Excel sheets which represent commission statements are
2 previously marked. I believe they are all part of Composite
3 Exhibit 13. Actually, they are part of Composite Exhibit 13.

4 (Composite Exhibit No. 13 was identified.)

5 BY MR. CUMMINGS:

6 Q. So what I would like to do is, let's look at the very first
7 document that I'm highlighting here.

8 What is Ambetter?

9 A. That's a carrier.

10 Q. An insurance company?

11 A. Yes, correct.

12 Q. Okay. And so when we open up this document, what are we
13 actually looking at here?

14 A. Those are the lists, the list that I would get by e-mail
15 each time that I would get paid.

16 Q. And essentially, this is just a list of the members that
17 Avant said that actually fully registered policies that you
18 sold, correct?

19 A. Correct, which would be -- add up to 49.

20 Q. Which would be -- what do you mean when you say that?

21 A. Yeah, because if you look at the number 490, and \$10 per
22 person, what they are trying to tell me here is that in all of
23 November and December, I only registered 49 people.

24 Q. Understood. And so you are referring to this members
25 column?

1 A. Correct.

2 Q. Now, we can see that there is only 38 rows, right?

3 A. Okay.

4 Q. However, when we look in the numbers column, we can see
5 that some of these cells have more than one member where
6 policies were sold, right?

7 A. Correct.

8 Q. And essentially, if we add all of those numbers up, it
9 should be 49, 49 times 10 is \$490?

10 A. Correct.

11 Q. And so in -- during the open enrollment period of 2020 to
12 2021, you were paid \$490 for the members that -- for selling
13 Ambetter insurance?

14 A. Under Ambetter, yes.

15 Q. Okay. Now -- now, Ms. Valiente, what I am going to do is
16 -- well, what we are going to do is, you are going to help me,
17 showing this sheet, so that we can keep track of how much money
18 you were paid altogether.

19 A. Okay.

20 Q. So now separately, you receive a commission statement for
21 selling Anthem Insurance; is that right?

22 A. Well, but that is three month's worth. That was January,
23 February, March.

24 Q. Okay. And when we look in Column H, Column H tells us the
25 period when the policy became effective, right?

1 A. Correct.

2 Q. Okay. So if it says January 1st, 2021, does that mean you
3 sold that policy during the open enrollment period?

4 A. Correct.

5 Q. And if it says February 1st, 2021, is it also possible that
6 you sold that policy during the open enrollment period?

7 A. In January, yes.

8 Q. Okay. I am talking about February. Let me ask you this:
9 When you sell a policy during the open enrollment period, when
10 does it go into effect for the number?

11 A. The ones that are sold up and including December the 31st,
12 they begin on January 1st.

13 Q. And what happens if you sell a policy on the closing day,
14 let's say January 31st, of the open enrollment period?

15 A. Well, the registration department would stay open all the
16 way until we closed so that they could begin to be active on
17 February the 1st.

18 Q. Okay. So if we see February 1st here, we can still say
19 that that policy was sold during an open enrollment period,
20 right?

21 A. Yes, because the open enrollment went all the way up to
22 January 31st.

23 Q. Okay. And when -- you did not put a title on the
24 commission statements that you received from Avant, correct?

25 A. I did not. No, of course not.

1 Q. So at the top where it says "Rafaela Valiente - Anthem -
2 January, February, March 2021," that's how you received this
3 document from Avant?

4 A. Correct.

5 Q. And what you were paid was \$350 for selling Anthem
6 insurance during those open enrollment period, correct?

7 A. Correct.

8 Q. All right. What does BCBSTX mean?

9 THE INTERPRETER: I'm sorry, Counsel, what's that
10 again?

11 MR. CUMMINGS: Sorry. Just looking at the top in the
12 green part there where it says BCBSTX.

13 THE WITNESS: That's an insurance company. Stands for
14 Blue Cross Blue Shield of Texas.

15 BY MR. CUMMINGS:

16 Q. This is a commission statement that you received from
17 Avant, again, for a Blue Cross Blue Shield that you sold during
18 the open enrollment period?

19 A. Correct.

20 Q. And how much money did you receive for selling insurance --
21 or for selling Blue Cross Blue Shield as far as during that
22 first open enrollment period?

23 A. \$180. And they deducted -- because they deducted \$120 from
24 the advance that they had given me.

25 Q. But through your efforts, you actually sold what I believe

1 would have been 30 policies, correct?

2 A. Well, from what it says there, it would be 30 policies.

3 Q. Right. Because 30 times ten is \$300.

4 And now, what's the name of the insurance company that
5 we're looking at in this commission statement?

6 A. Bright Health.

7 Q. And you sold Bright Health policies during that first open
8 enrollment period?

9 A. Yes.

10 Q. And how much did Avant pay you for selling Bright Health?

11 A. \$240.

12 Q. What is Cigna?

13 A. That's another insurance company.

14 Q. And you sold Cigna health plans during the open enrollment
15 period?

16 A. Yes.

17 Q. Why do you have two separate commission statements for
18 Cigna?

19 Well, let me ask you this: Do you know why you have two
20 separate commission statements from Cigna?

21 A. I don't. I don't remember.

22 Q. However, when we look at the column here that says "policy
23 period," does it seem to you that you sold this policy -- these
24 policies during the open enrollment period?

25 A. Yes.

1 Q. And so one calculation we have here, you would have been
2 paid \$190 based on this commission statement for selling Cigna?

3 A. Correct.

4 Q. And then when we look at the Cigna policy or Cigna
5 commission statements that says January 2021, how much were you
6 paid for selling those insurance policies?

7 A. No. If you look at the prior statement that we were
8 looking at, those \$80 were already included there. It was --
9 it was \$80 from one and 110 from another.

10 Q. Okay. Thank you.

11 Okay. So altogether, \$190, correct?

12 A. Correct.

13 Q. All right. Friday is also an insurance company?

14 A. Yes.

15 Q. So I see that there is three commission statements that you
16 received for Friday. Now, it looks like you sold a lot of
17 Friday.

18 Is there a reason why there is so many more policies sold
19 for Friday than the other statements that we have been seeing?

20 A. Well, the one that you have open on the screen right now,
21 that's the March statement.

22 Q. Now, again, what we have to do is, we have to look at the
23 effective date, correct?

24 A. Well, yes, but since there is only one for the month of
25 January, though.

1 Q. When you say there is only one for the month of January,
2 what do you mean?

3 A. There's one for January, one for February and one for
4 March.

5 Q. Oh, you mean three -- three separate commission statements.

6 However, looking at this March 2021 commission statement
7 for Friday, we see that there are policies with an effective
8 date of January 21st, 2021?

9 A. Yes.

10 Q. Which means you would have sold them during the open
11 enrollment period, correct?

12 A. Correct.

13 Q. And could it be possible that even the ones at the bottom
14 that say March 21st, 2021, were sold during the open enrollment
15 period?

16 A. No.

17 Q. Why is that?

18 A. Because those that have an effective date on March, must
19 have been sales from February.

20 Q. Okay. Which would have been outside of the open enrollment
21 period?

22 A. Correct.

23 Q. Now, since there are two other Friday commission
24 statements, as you already pointed out, do you think that the
25 March statement that we were just looking at also includes

1 those other two commission statements for Friday?

2 A. It looks like that. It looks like they have been added up.

3 Q. Okay. So now looking at your January Friday -- January
4 Friday -- January commission statement for the Friday insurance
5 company, how much money were you paid?

6 A. 580.

7 Q. And now we are looking at your February Friday commission
8 statement, correct?

9 A. Yes.

10 Q. And all of these policies have an effective date of January
11 1st, 2021?

12 A. Yes.

13 Q. Which means you sold it during the open enrollment period?

14 A. Correct.

15 Q. Okay. And so how much did Avant pay you for selling these
16 -- for selling Friday, according to this statement?

17 A. As per this statement, it's 640.

18 Q. Let's go to Molina. How much did Avant pay you for selling
19 Molina insurance during the open enrollment period?

20 A. 450.

21 Q. And again, we have two statements, so let's go to the one
22 that says February 2021.

23 And how much were you paid for selling these policies?

24 A. 710.

25 Q. And last but not least, now we have the Oscar Insurance

1 Company?

2 A. Correct.

3 Q. And what does your January Oscar commission statement sent
4 to you by Avant say that you were paid?

5 A. 670.

6 Q. And how about your February Oscar commission statement from
7 Avant, how much did they pay you?

8 A. This is 740.

9 Q. And just to be clear, when we look all the way in the
10 left-hand column where it says "state," what does TX stand for?

11 A. That's the name of the state, whether the client is from
12 Florida or Texas.

13 Q. And are you licensed to sell insurance in Texas?

14 A. At that time, at that point in time, I was not.

15 Q. How were you able to sell policies in Texas if you were not
16 licensed?

17 A. Because those policies sold would not be registered using
18 my license number.

19 Q. Whose license number were they registered using?

20 A. They would be registered under Reinier Cortes's license
21 number or Andrea Quintero's number.

22 Q. And when you say license number, are you referring to the
23 NTN?

24 A. Yes.

25 Q. But you were the one who actually -- you were the person

1 who was actually on the call center floor taking the leads for
2 these policies, correct?

3 A. Correct.

4 Q. All right. Now, you already said that the open enrollment
5 period went from, I believe you said, October 2020 to January
6 31st, 2021?

7 A. Correct.

8 Q. Did the open enrollment period officially start on November
9 1st?

10 A. Yes.

11 Q. And during open enrollment period, what was your work
12 schedule? What hours were you required to be at the Avant
13 office?

14 A. From 9 a.m. to 9 p.m.

15 Q. Did you ever work on Saturdays during open enrollment
16 period?

17 A. No. No, I would not work on Saturdays.

18 Q. Okay. And so is it fair to say you were working 60 hours a
19 week during the open enrollment period?

20 MR. TROPP: Objection, leading.

21 THE COURT: I'm sorry?

22 MR. TROPP: Leading.

23 THE COURT: Sustained.

24 BY MR. CUMMINGS:

25 Q. How many hours a week did you work during the open

1 enrollment period?

2 A. 60 hours.

3 Q. Now, we just went through several commission statements
4 that you received from Avant, correct?

5 A. Yes.

6 Q. Do you believe those commission statements are correct?

7 A. I don't know.

8 Q. Why don't you know?

9 A. Because those are the statements of the amounts that I was
10 paid. These are not the statements, these -- this is not where
11 I registered my sales.

12 Q. Where did you register your sales?

13 A. At the -- in the Excel spreadsheets.

14 Q. This morning did you hear Alix Ledesma explain how she had
15 a Google sheet that she shared with Reinier Cortes?

16 A. Yes.

17 Q. Did you have a similar Google sheet that you used to record
18 the policies you sold at Avant?

19 MR. TROPP: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. CUMMINGS:

22 Q. How did you -- what document did you use to record the
23 policies that you sold for Avant?

24 A. The Excel worksheets. Well, it was actually Google Sheets
25 that Reinier would share.

1 Q. And, Ms. Valiente, I am now showing -- or getting ready to
2 show you what has previously been marked as part of Composite
3 Exhibit 4.

4 (The exhibit was published to the jury.)

5 BY MR. CUMMINGS:

6 Q. Do you recognize this document?

7 A. Correct.

8 Q. What is this document?

9 A. This was an e-mail I sent to Mr. Cortes because I had some
10 very large discrepancies between the commissions from one month
11 to the next, so that he could look into it to see what was
12 going on because I was not in agreement.

13 Q. Could you please read the e-mail that you sent?

14 A. What I wrote to him was: "Ray, please, I did not
15 understand such abrupt changes from one month to the next.
16 Please look into this and let me know. I would be grateful."

17 Q. Now, um, the numbers that are in this e-mail, what do those
18 numbers represent?

19 A. This is what, as per the commission statements, I was paid
20 for May. It says for Molina, 100; for BH, 630; for Blue Cross
21 Blue Shield, 2,200; and for Anthem, 280. But then you get to
22 the month of June where I was paid these amounts, and this
23 caught my attention because I would make almost the same amount
24 of sales every week.

25 Q. Every week or every month?

1 A. I mean -- but I worked from Monday through Friday, so more
2 or less every week I knew I was making a hundred clients a
3 week.

4 Q. And the numbers here, do they represent numbers or do they
5 represent dollars?

6 A. Dollars.

7 Q. Okay. So when we see 1100, that represents \$1100?

8 A. Correct.

9 Q. And where did you get that number from, 1100 for Molina
10 Health Insurance?

11 A. From my commission statement for May, from Molina.

12 Q. So again, that number would have been the amount that Avant
13 paid you per a commission statement you received?

14 A. Correct.

15 Q. So why was it an issue for you that -- why was it an issue
16 for you when you see from May to June, the Molina Health
17 Insurance --

18 MR. TROPP: Objection, leading.

19 THE COURT: Overruled.

20 BY MR. CUMMINGS:

21 Q. Why was it an issue for you where you see the Molina Health
22 Insurance payment went from 1,100 in May to \$865 in June?

23 A. It's not that it was an issue, it was concerning. Because
24 if I'm working the same amount, the same amount of hours, it is
25 a big difference in the amount of money.

1 Q. Now, if you received \$1,100 in a commission statement in
2 May, when did you actually produce those sales?

3 A. In April.

4 Q. And in April of 2021, were you still under the payment plan
5 where you were receiving residual payments every month?

6 A. No.

7 Q. When did you say that stopped?

8 A. That started with the May sales -- no, it was April and
9 May. Started in April.

10 Q. And the numbers that are in red in this e-mail, what
11 does -- what's the significance of the red?

12 A. It means that in the other companies, we had a difference,
13 you know, maybe like \$200 here or there. But this one was
14 almost a thousand dollars worth of a difference.

15 Q. Now, this is an e-mail that you sent to Reinier Cortes,
16 right?

17 A. Yes.

18 Q. What was Mr. Cortes's response to you?

19 A. By e-mail, he didn't respond to anything.

20 Q. Did you have any separate conversation that did not take
21 place in response to this e-mail?

22 A. Yes.

23 Q. And let me rephrase that question.

24 Did you have a separate conversation that did not take
25 place over e-mail about what you wrote here?

1 A. That's correct.

2 Q. And what kind of a conversation was that; how did it take
3 place?

4 A. It was over at his office, and I asked him if he had been
5 able to review this request of mine that I had sent over to him
6 by e-mail.

7 Q. About how long after you sent the e-mail were you having
8 this conversation in his office?

9 A. It was a week, the following week.

10 Q. What did Reinier tell you?

11 A. He said that he -- he said that he was going to schedule a
12 Zoom meeting between me and the person that was in charge of
13 the payments, that was doing the payments, supposedly, from the
14 accounting department to look into what was going on.

15 Q. And did you have that meeting?

16 A. I never met -- I never even met that person.

17 Q. Did -- did Reinier schedule the Zoom call?

18 A. No, it never happened.

19 Q. Did you ever get an explanation for the differences -- or
20 your concerns about the differences in your pay?

21 A. Never.

22 Q. And I am now showing you another document from Composite
23 Exhibit 4.

24 (The exhibit was published to the jury.)

25

1 BY MR. CUMMINGS:

2 Q. Do you recognize this document?

3 A. That's correct, I do.

4 Q. And did you send this e-mail to Reinier Cortes?

5 A. I did as well.

6 Q. Was this on the same day as the last e-mail?

7 A. Yes.

8 Q. And just a few minutes later?

9 A. Yes.

10 Q. Could you please read this e-mail to us?

11 A. I wrote him the name of the insurance company, in this case
12 it's Friday, and the payments that, as per the commission
13 statement, I had gotten paid and what I got paid in April and
14 what I got paid in May, and I wrote a note saying that, "Please
15 also review these payments as well."

16 Q. And did you expect the discrepancy in this e-mail to also
17 be addressed during that Zoom call?

18 A. Of course.

19 Q. But as you said, there was no Zoom call, correct?

20 A. Correct.

21 Q. And yesterday in court -- scratch that.

22 (Pause in proceedings.)

23 BY MR. CUMMINGS:

24 Q. After the January 31st -- or after January 31st in 2021,
25 you continued to sell insurance; is that correct?

1 A. That's correct.

2 Q. And you sold insurance for the whole year at Avant in 2021,
3 right?

4 A. Correct.

5 Q. How much money did you make in 2021 at Avant?

6 A. 84,215.

7 Q. If you had to average that out per month, about how much
8 money is that a month?

9 A. \$7,000.

10 Q. Do you think that the \$84,215 that you made at Avant in
11 2021 was the correct amount of payment you should have
12 received?

13 A. No.

14 Q. And did you have access to the statements from the
15 insurance companies about how many policies you sold that were
16 actually fulfilled?

17 A. No.

18 Q. And if you had to guess, how much do you think you should
19 have earned per month in 2021?

20 A. Well, it's not a matter of guessing, right? In the Excel
21 sheet at the end of the month, I would add up, more or less,
22 and get an amount of the total amount of clients. But yes, it
23 would have been \$9,000 a month.

24 Q. And in 2021, did a new open enrollment period start at the
25 end of the year?

1 A. It did.

2 Q. And when did the open enrollment period begin again in
3 2021?

4 A. From November the 1st until January of 2022.

5 Q. And how many -- what months in 2021 were not part of the
6 open enrollment period?

7 A. But that's the thing, there were some extensions of time
8 due to the pandemic, they extended the period, so I don't
9 recall exactly.

10 Q. Well, let me ask. Is it fair to say that February 2021,
11 was not part of an open enrollment period?

12 A. Of 2021?

13 Q. Correct.

14 A. I don't remember.

15 Q. I believe you previously stated that the open enrollment
16 period ended January 31st, 2021; is that right?

17 A. Correct.

18 Q. So is it fair to say that February 2021 was not an open
19 enrollment period?

20 MR. TROPP: Objection, leading.

21 THE COURT: Overruled.

22 THE WITNESS: Correct. And that means it was no
23 longer.

24 BY MR. CUMMINGS:

25 Q. And similarly, would October 2021, not have been part of

1 the open enrollment period?

2 A. It would not have.

3 Q. Okay. So if it's February to October 2021, were those
4 months that were not part of the open enrollment period?

5 A. No, they were not part of the enrollment period. But yes,
6 I would register clients throughout the entire year.

7 Q. Now, I am not going to go through all of these, but you
8 also worked the next open enrollment period starting at the end
9 of 2021 at Avant, correct?

10 A. Correct.

11 Q. And during that open enrollment period, you received -- or
12 let me put it like this: After the enrollment period, you
13 received commission statements from Avant?

14 A. Yes.

15 Q. And looking at my screen right now, right about where that
16 yellow arrow is, do you recognize those Excel spreadsheets as
17 the commission statements you received from Avant?

18 A. That is correct.

19 Q. And each one of those Excel spreadsheets is going to have
20 the amount of money that Avant paid you during the open
21 enrollment period?

22 A. Correct.

23 Q. And from 2021 to 2022?

24 A. Correct.

25 Q. Now, in 2022, how much money did you make at Avant?

1 A. 57,920.

2 Q. And so on average, how much did you make a month in 2022?

3 A. If we count up until the date that I last worked there,
4 around \$8,000 per month.

5 Q. What date did you last work at Avant?

6 A. June -- June the 23rd of 2022.

7 Q. And again, the commission statements that you received from
8 Avant for the open enrollment period from 2021 to 2022, do you
9 believe they are correct?

10 MR. TROPP: Your Honor, objection. Just first of all,
11 on the earnings, 2022, 8,000, I don't know how the numbers work
12 like that, if that's a mistake or just got put in there, 8,000
13 on the overtime calculation sheet.

14 THE COURT: Overruled.

15 I don't know what your evidentiary objection is.

16 MR. TROPP: My objection is, I am objecting, first of
17 all, on the mathematics of 8,000 a month.

18 THE COURT: What rule of evidence?

19 MR. TROPP: I'm sorry?

20 THE COURT: What rule of evidence are you citing to
21 me?

22 MR. TROPP: Facts not in evidence is my objection and
23 conclusory --

24 THE COURT: I'm sorry?

25 MR. TROPP: I'm objecting on facts not in evidence and

1 the conclusory number there.

2 THE COURT: Overruled.

3 THE WITNESS: What was the question?

4 BY MR. CUMMINGS:

5 Q. Yeah. Do you think that the commission statements you
6 received for the 2021 to 2022 open enrollment period from Avant
7 are correct?

8 A. No.

9 Q. And what about commission statements you received after the
10 open enrollment period in 2022? Do you think they are correct?

11 A. No.

12 Q. And why is that?

13 A. Because by that time period, there was a whole lot of more
14 personnel working down in Colombia, and the amount of calls
15 coming in of perspective clients was a lot greater. Meaning
16 that we would sign up many clients.

17 Q. And at this time in 2022, you were still -- did you still
18 keep a Google sheet of the policies you were selling?

19 A. That is correct.

20 Q. And so how much do you think you should have earned monthly
21 in 2022?

22 A. Around \$10,000.

23 Q. Ms. Valiente, I am now showing you what has already been
24 marked as Exhibit 8.

25 (The Exhibit was published to the jury.)

1 BY MR. CUMMINGS:

2 Q. And have you seen this document before?

3 A. Yes, that's correct.

4 Q. And when did you first see this document?

5 A. Mr. Reinier gave it to each one of us agents.

6 Q. And which insurance plan were you most concerned about
7 selling during the 2021/2022 open enrollment period?

8 A. Oscar.

9 Q. Why were you most concerned about selling Oscar?

10 A. Because you had greater possibilities of earning a bonus
11 through them.

12 Q. And how many insurance policies did you need to sell for
13 Oscar to receive the largest bonus that they offered?

14 A. Over 600 members.

15 Q. Did you sell more than 600 members for Oscar during the
16 2021/'22 open enrollment period?

17 A. More than 1,000.

18 (Pause in proceedings.)

19 BY MR. CUMMINGS:

20 Q. Mr. Garfield -- I'm sorry, Ms. Valiente, I am now going to
21 show you what's been previously marked as Composite Exhibit 1.

22 (The exhibit was published to the jury.)

23 BY MR. CUMMINGS:

24 Q. Do you recognize the image on the screen right here?

25 A. Of course.

1 Q. And what is this a picture of?

2 A. This is a picture that I took of the summary of the chart
3 or Google Sheets spreadsheet where I would record my sales.

4 Q. You took this picture?

5 A. Yes.

6 Q. Do you remember when you took this exact picture or what
7 time period this was?

8 A. That picture was December's closing.

9 Q. Meaning the end of December 2021?

10 A. Correct.

11 Q. During the open enrollment period?

12 A. Correct.

13 Q. And at that time, how many Oscar policies did you record?

14 A. 889.

15 Q. And is this also a picture that you took?

16 A. That's correct.

17 Q. When did you take this picture?

18 A. That was January's closing.

19 Q. At the end of the complete open enrollment period at the
20 end of 2022?

21 A. Correct. Correct.

22 Q. Now -- and how many Oscar policies had you sold by that
23 time?

24 A. I had 1,082 members.

25 Q. Now, is this a continuation, meaning that here you had --

1 you had sold 889 and then you sold from 890 to 1092 the next
2 month?

3 A. Yes, correct.

4 Q. And is this the Google sheet that was shared with
5 Mr. Cortes?

6 A. Correct.

7 Q. Now, how did your employment at Avant end?

8 A. Mr. Reinier Cortes fired me.

9 Q. And why did he fire you?

10 A. I don't know.

11 Q. Did you ask him why you were being fired?

12 A. Of course I did.

13 Q. What did he say?

14 A. He said that he didn't have to give me any information.

15 Q. Did you ever receive your Oscar bonus?

16 A. No.

17 MR. CUMMINGS: No further questions.

18 THE COURT: Cross-examination?

19 (Pause in proceedings.)

20 MR. CUMMINGS: Your Honor, I actually have just about
21 five more minutes with Ms. Valiente. Thank you.

22 THE COURT: That was five minutes right there.

23 DIRECT EXAMINATION (Cont'd.)

24 BY MR. CUMMINGS:

25 Q. Okay. Ms. Valiente, I just want to walk you through some

1 numbers.

2 (Pause in proceedings.)

3 BY MR. CUMMINGS:

4 Q. All right. Ms. Valiente, what is the total amount of money
5 that you earned during the 2022/2021 open enrollment period,
6 according to Avant?

7 A. Well, my 1099 showed 84,250.

8 Q. Not all of the money that you earned in 2021, I am just
9 saying if we look at the numbers here on your screen, based on
10 the commission statements that we went through and we added all
11 these numbers up, what would that total be?

12 A. I'm not good for math.

13 MR. CUMMINGS: Your Honor, if I may approach the
14 witness?

15 BY MR. CUMMINGS:

16 Q. Ms. Valiente, do me a favor and calculate those numbers for
17 me.

18 A. I got 5,360.

19 Q. Okay. So you earned \$5,360 according to Avant during the
20 open enrollment period. And how many weeks are there from
21 November 1st, 2020 to January 31st, 2021?

22 A. Around 13 weeks.

23 Q. And you worked 60 hours a week, correct?

24 A. And even more than that.

25 Q. Why do you say you worked more than that?

1 A. Because on some occasions, it was still 9 p.m. and we are
2 still getting phone calls transferred over to us. And we had
3 to answer the clients and sell them policies.

4 Q. Okay. Is it fair to say, however, that, generally
5 speaking, during the open enrollment period, you worked 12
6 hours a week [sic]?

7 THE INTERPRETER: I'm sorry?

8 BY MR. CUMMINGS:

9 Q. Is it fair to say, however, that generally speaking during
10 the open enrollment period, you worked 12 hours a day?

11 A. Correct.

12 Q. Okay.

13 MR. CUMMINGS: Just one second.

14 (Pause in proceedings.)

15 BY MR. CUMMINGS:

16 Q. Okay. All right. So, Ms. Valiente, what is \$5,316 divided
17 by 13 weeks?

18 A. My phone is in my purse. 412 and 31 [sic].

19 Q. \$412.31?

20 A. Yes.

21 Q. So now -- now, what is \$412.31 divided by 60 hours?

22 A. 6.87.

23 Q. What is \$6.87 divided by two?

24 A. 3.44.

25 Q. I'm sorry, what did say again?

1 A. Oh, 3.44.

2 Q. What is 3.44 times 13 weeks?

3 A. 44.72.

4 Q. I apologize. I'm sorry. What's 3.44 times 20 hours?

5 MR. TROPP: Objection, Judge, leading.

6 THE COURT: Overruled.

7 THE WITNESS: 68.8.

8 BY MR. CUMMINGS:

9 Q. All right. And what is \$68.80 times 13?

10 A. \$894.40.

11 Q. Did the screen lock? Did the screen lock on my phone?

12 Did you say no?

13 A. No, no, I am making sure it doesn't lock.

14 Q. Okay. Thank you.

15 All right. Now, how many months are there from February to
16 October?

17 A. Eight.

18 Q. And what is 9,000 times 8?

19 A. Now I lost your calculator app.

20 (Pause in proceedings.)

21 THE WITNESS: Okay. Well, 9 times 8 is 81, isn't it?

22 BY MR. CUMMINGS:

23 Q. 9,000 times 8?

24 A. 72. Oh, my, I've become dumb because of this.

25 Q. Generally speaking, how many weeks are in the month?

1 A. Well, some months are four, other months have five.

2 Q. So generally speaking?

3 Would you say that there are four months -- I'm sorry, four
4 weeks in a month?

5 A. Yes. But some months have five.

6 Q. Okay. So -- but we are going to go with an average here,
7 so.

8 A. So that would be 34 in the 8 months.

9 Q. 8 times 4 should give you what?

10 A. 32, plus two additional weeks out of two months with five
11 weeks each, that would be two more.

12 Q. What is 72,000 divided by 30 -- I'm sorry, what did you
13 say, two more? How many weeks did you say?

14 A. Yes, 34.

15 Q. Okay. What's 72 divided -- 72,000 divided by 34?

16 A. \$2,117.65. \$2,117.65.

17 Q. Now, during the months in 2021 when it was not open
18 enrollment, how many hours were you working?

19 A. I worked the entire year. 2021, I worked the entire year,
20 Monday through Friday, from 9 a.m. to 9 p.m.

21 Q. So how many hours did you work per week?

22 A. 60 hours per week, the whole year.

23 Q. And what is 2,117.65 divided by 60?

24 A. Now it locked again. I have mine in the purse.

25 (Pause in proceedings.)

1 BY MR. CUMMINGS:

2 Q. Okay. So, Ms. Valiente, what is 2,17.65 divided by 17?

3 A. 35.29.

4 Q. I'm sorry, say that again, 35.29?

5 A. 35.29.

6 Q. So that would be your hourly rate. What's 35.29 divided by
7 two?

8 A. 17.65.

9 Q. And what is 17.65 times 20?

10 A. 353.

11 Q. 353 flat?

12 A. Yes.

13 Q. And what is 353 times 34 weeks?

14 A. 12,002.

15 Q. Now, did you also work from 9 a.m. to 9 p.m. in 2022
16 outside of the enrollment period?

17 A. No. In 2022, when was it -- February, March -- it was
18 either in April or May when they changed the schedule and they
19 started doing the schedules. That's when I started working
20 from 3 p.m. to 9 p.m.

21 Q. And did you work 9 a.m. to 9 p.m. anywhere from February
22 2022 to March 2022?

23 A. In February, yes, I did work from 9:00 to 9:00.

24 Q. And do you agree that there should, again, be nine months
25 of open enrollment -- of non-open enrollment months in 2022?

1 A. Correct.

2 Q. But you only worked 9:00 to 9:00 in February, correct?

3 A. No, up until February.

4 Q. Because you worked 9:00 to 9:00 during the open enrollment
5 period?

6 A. Correct.

7 Q. Okay. I am not worried about the open enrollment period
8 right now, so.

9 A. Okay.

10 Q. All right. How many weeks are in a month? Well, how many
11 weeks are in February?

12 A. Four.

13 Q. What is 10,000 divided by 4?

14 A. 2500.

15 Q. And how many hours did you work per week in February 2022?

16 A. 60.

17 Q. All right. What is 2,500 divided by 60?

18 A. 41.67.

19 Q. What's 41.67 divided by 2?

20 A. 20.84.

21 Q. What is 20.84 times 20?

22 A. \$416.80.

23 Q. Did you say 8, as in O, 8?

24 A. 8-0.

25 Q. What is 416.80 times 4?

1 A. \$1,667.20.

2 Q. Give me that number again, please?

3 A. \$1,667.20.

4 Q. I got it.

5 A. 1667.

6 Q. Okay. Excellent, thank you.

7 All right.

8 MR. CUMMINGS: Your Honor, just in the interest of
9 time, there is another section I would have to go through with
10 Ms. Valiente, but it would take quite some time. The
11 commission statements are already entered into evidence, so by
12 stipulation, if the -- if the Defense doesn't mind, what I can
13 do is I can input those numbers and then when they finish with
14 their cross, I can just quickly run back over them with
15 Ms. Valiente.

16 THE COURT: Let's proceed in that fashion.

17 Cross-examination?

18 MR. TROPP: Your Honor, do you mind if I ask how long
19 we are going today?

20 THE COURT: Until we are done with her.

21 MR. TROPP: Until I'm done?

22 THE COURT: Until we are done with her as a witness.

23 MR. TROPP: I will go as quickly as I can. I know we
24 are all tired.

25

CROSS-EXAMINATION

BY MR. TROPP:

Q. How, Ms. Valiente, how are you?

A. Good, thank you.

Q. Did you spend some time on those numbers for the December 2020/'21 period, correct?

A. Correct.

Q. Isn't it true, isn't it correct that in December, you left the office? December of 2020 you went to work at a warehouse from December 2020 until up all of January 2021, you were working at a warehouse and not working for Avant?

A. No, that was in January. And I worked in Avant up until the 31st, and that was our agreement. In other words, I was unemployed at the time.

Q. So when -- what period did you not work in Avant in that window?

A. It was approximately for 15 days during January, 15 or 20 days.

Q. So 15 to 20 days of January 2021?

A. Correct, yes.

Q. So from that chart we just did, we can subtract 12 hours a day you said you were working for those 20 days?

A. Correct.

Q. Okay. And in December, didn't you leave periods to work at this other place, the warehouse, December 2020?

1 A. When could I work at a warehouse if I was working at Avant
2 from 9 a.m. to 9 p.m.?

3 MR. CUMMINGS: Objection.

4 BY MR. TROPP:

5 Q. And that same period where you worked for 20 days not
6 working at Avant because you were working at the warehouse,
7 that's when you're saying you sold a thousand policies of
8 Oscar?

9 A. Well, the 1,000 policies for Oscar were in the enrollment
10 period from 2021 to 2022, and if I'm not mistaken, you are
11 asking me for the 2022/2021 period. Please correct me.

12 Q. I am. I am.

13 A. What period are you talking about?

14 Q. 2020 to 2021 when you were -- that was January where you
15 were not -- you were working at a warehouse?

16 A. Correct, yes. But the 1,082 policies from Oscar were not
17 in the period ending in 2021, they were in the period from '21
18 to '22.

19 Q. Okay. We will talk about that.

20 Also, isn't it correct in December of 2020, you went to
21 Cuba and Jamaica?

22 A. Yes.

23 Q. For how long?

24 A. Like three days, about three days.

25 Q. Just three days?

1 A. Yes. And two of the days were Saturdays -- because the
2 other days were Saturday and Sunday that I wasn't working
3 anyway, so it didn't effect me.

4 Q. So you went to Cuba and Jamaica over the weekend for a
5 three-day trip in December?

6 A. No, it was in November.

7 Q. Not in December?

8 A. No.

9 Q. Okay. Now, when you first started, you were -- you were
10 doing insurance for a while before working for Avant?

11 MR. CUMMINGS: Objection, relevance, Your Honor,
12 motion *in limine*.

13 THE COURT: Overruled.

14 THE WITNESS: Correct.

15 BY MR. TROPP:

16 Q. You worked for some company called Combine or something
17 selling insurance?

18 A. Combined, right.

19 Q. And you were an independent contractor for them?

20 A. Correct.

21 MR. CUMMINGS: Objection, Your Honor, relevance and
22 motion *in limine*.

23 THE COURT: Overruled. She answered the question.

24 BY MR. TROPP:

25 Q. And when you started working for Avant, there was never any

1 discussion or there was never any agreement that you were going
2 to get paid hourly, correct?

3 A. Correct.

4 Q. At your previous place, did you get paid hourly?

5 MR. CUMMINGS: Objection, relevance.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. TROPP:

9 Q. And commission?

10 A. No.

11 Q. Just hourly, there's no commissions?

12 A. Correct. But my prior job I wasn't selling -- see, between
13 Combined and Avant, I was working at a different place.

14 Q. Was there a period where you worked for both?

15 A. Both what? No.

16 Q. Okay. But at Combined, you were selling insurance and the
17 agreement over there was to get paid hourly?

18 MR. CUMMINGS: Objection, relevance.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 BY MR. TROPP:

22 Q. So how were you paid at Combined when you were selling
23 insurance there?

24 A. Based on commission.

25 Q. Pure commission?

1 A. Okay, yes, correct.

2 Q. And then when you came over to Avant, there was no
3 discussion, no agreement about getting paid hourly, correct?

4 A. Correct.

5 Q. Is it fair to say that in the marketplace sales for health
6 insurance -- and you have been doing this for a long time --

7 MR. CUMMINGS: Objection, Your Honor, industry custom
8 is not relevant.

9 THE COURT: Overruled.

10 MR. CUMMINGS: Your Honor, can we approach to make a
11 record on this?

12 THE COURT: Let me hear the question. I haven't heard
13 the question.

14 BY MR. TROPP:

15 Q. In all the marketplace sales, and in your experience, they
16 are based on commission and not hourly?

17 A. The insurance companies do pay based on commission. Now,
18 insurance agencies do pay a base salary.

19 Q. But that wasn't your case at Combined or that wasn't the
20 agreement with Avant, correct?

21 A. In Combined, I was self-employed out on the streets on my
22 own. I didn't have to go to any office there.

23 Q. Okay. Okay. So -- so around November or October, you said
24 in 2020, you started working for Avant, and you eventually got
25 paid in -- in February?

1 A. Yes. He did give me an advance in January, a check; if I
2 remember correctly, it was 1,560.

3 Q. And is it fair to say that in February, your total amount
4 of earnings was almost 3,000?

5 MR. CUMMINGS: Objection, misstatement of evidence.

6 THE COURT: Overruled.

7 THE WITNESS: Well, partially. You see, the companies
8 don't always pay everything at the same time. They take a
9 while. So I collected, but partially and by parts.

10 BY MR. TROPP:

11 Q. Partially how much --

12 A. By parts. In parts.

13 Q. And that's about what, 3,000?

14 A. I don't remember. I don't remember.

15 Q. Okay. And a month after that, you started -- you started
16 being -- average about of 7,000 a month?

17 A. No. It began to increase month by month.

18 Q. You did not average 7,000 a month after March?

19 A. That would be the average if I divide the total amount I
20 made throughout the whole year, divided by the number of months
21 I worked.

22 Q. No. I am actually asking -- I am actually asking you
23 whether or not you were actually paid \$7,000 a month starting
24 in -- after that period?

25 A. It would vary. I wouldn't be making a fixed salary, and

1 the amounts would change based on the commissions that the
2 companies were paying.

3 Q. Okay. So, um, I'm going to come back to that because we
4 need to be -- I can try to remind you.

5 Okay. For the -- for the time you worked at Avant, is it
6 fair to say that -- that the hours that you worked, because you
7 chose to work it in order to make more money, not because you
8 had to?

9 A. Yes, correct. But can I clarify?

10 Q. Go head, I will let you. Thank you.

11 A. Yes, I did -- I did elect that, because if I am in a place
12 that I'm only making money based on commission, the more I
13 work, the more money I'll make. First, that's number one.

14 Q. That makes sense.

15 A. And No. 2 would be that if there were no people to answer
16 the phones as they were coming in, if that were to happen,
17 Reinier would stand up in front of everybody and say, Look,
18 today we lost so many phone calls, so many sales because of
19 these -- not being anybody available. So in certain ways, he
20 was implying that we needed to be there at the office all this
21 time to be able to answer any phone calls that would come in.

22 Q. Okay. Before I ask you the hours that you worked, it's --
23 is the hours that you chose to work not because you had to
24 because you wanted to. You said yes.

25 A. Yes.

1 Q. Thank you.

2 A. And I confirmed my answer.

3 Q. Yes. Thank you.

4 And if you wanted to work less hours, that would be okay;
5 you would be allowed to work less hours, right?

6 A. Well, I think that that could have been the case if I
7 initially, when I first started, had my interview with Reinier,
8 I would have told him that I had a limited schedule, he would
9 have accepted that. But since I started working there with an
10 open schedule, then I had to accept that.

11 Q. My question is, the hours that you worked, they were
12 completely because of your choice, not because you had to do
13 it; yes?

14 A. Correct.

15 Q. And you could choose hours if you -- you could choose less
16 hours if you didn't care about making more money, and if you
17 decided to stay home and watch TV or not go to work at all,
18 that would be okay also?

19 A. I don't think I would have been able to stay at home
20 whenever I wanted to watch TV; that, I don't think so.

21 Q. What are you saying, you think you would have been fired if
22 you decided to stay home and watch TV?

23 A. Of course. But on top of that, I'm a person that am
24 responsible, reliable at work. And if I -- and if I have a
25 commitment at work to follow a certain schedule and a certain

1 amount of clients.

2 Q. Let me ask you this way, I want to use these exact words.

3 If you chose not to go to work at all and stay home and watch

4 TV, or not go at all, that would be okay with Avant; yes or no?

5 Would you agree with that?

6 A. I don't know.

7 Q. Okay. And are you -- okay. Let me try to remind you. Do

8 you remember I took your -- I asked you some questions at

9 deposition?

10 A. Oh, my, four hours worth.

11 Q. Right. Yes, I asked questions. And you told the truth

12 right when I asked you the questions, right?

13 A. Correct.

14 Q. Okay. So -- so, um, let's try to clear this up.

15 (Pause in proceedings.)

16 MR. CUMMINGS: Objection, Your Honor. I am not sure

17 what exhibit it is. It looks like a deposition that's not in

18 evidence.

19 THE COURT: Not in evidence, please remove it.

20 MR. CUMMINGS: Can you please have that taken down?

21 (Pause in proceedings.)

22 MR. TROPP: Okay. So, Your Honor, if I could read

23 from Page 65 and the line?

24 MR. CUMMINGS: Your Honor, I am not sure if this is an

25 impeachment that's happening, but I am objecting to improper

1 impeachment.

2 THE COURT: I have no way of knowing. I don't know
3 the question and answer he is going to read.

4 MR. TROPP: I asked a question, the question was: "If
5 you decided -- okay. Um, if you decided to take a two and a
6 half hour lunch today, walk at the beach for half an hour,
7 three hours and then come back, you could do that if you wanted
8 to, right?"

9 And you answered, "Yes, also."

10 THE COURT: I think our interpreter needs to translate
11 that, please.

12 THE INTERPRETER: This is the interpreter. Can you
13 repeat the question, the -- what you were reading?

14 MR. TROPP: Yes.

15 BY MR. TROPP:

16 Q. Okay. I had asked the question on Page 66, Line 2, "If you
17 didn't care about making more money, if you want to take the
18 day off and watch TV, that's okay, too, right?"

19 And the answer was, "Correct?"

20 A. Yes. It's the same answer I gave you today.

21 Q. Okay. And you were allowed to do that because you were an
22 independent contractor?

23 MR. CUMMINGS: Objection, calls for a legal
24 conclusion.

25 THE COURT: Overruled.

1 THE WITNESS: I don't know, because that never
2 happened.

3 BY MR. TROPP:

4 Q. But if you wanted to, that would be okay because you were
5 an independent contractor?

6 A. Okay.

7 Q. Thank you. I'm okay with that.

8 When I last spoke to you, didn't -- do you remember telling
9 me in the deposition that you were not suing or asking for
10 overtime in your lawsuit?

11 MR. CUMMINGS: Objection, improper impeachment.

12 THE COURT: Sustained.

13 BY MR. TROPP:

14 Q. Is it fair to say that your claim, what you have been
15 asking for, has been for bonuses and commissions, not for
16 overtime?

17 A. For everything.

18 Q. Okay. Well, I asked you that same question at our
19 deposition. We talked about that.

20 A. Yes, I remember.

21 Q. And -- and when I asked you those questions, were you being
22 truthful at that time, like you are being now?

23 A. And you also asked me if I had to choose between one where
24 there was overtime or bonuses or commissions, which one I would
25 drop, and I said that I would drop the overtime because it was

1 less in quantity.

2 Q. Actually, the question that I asked was, um, "Why are you
3 suing Reinier for overtime?"

4 And you answered at the deposition, I'm not suing him --

5 MR. CUMMINGS: Objection, improper impeachment.

6 THE COURT: Sustained.

7 BY MR. TROPP:

8 Q. At our -- the last time we spoke at the deposition, I asked
9 you, What is it that's missing, what are you owed, and you said
10 just about a bonus --

11 MR. CUMMINGS: Objection, improper impeachment.

12 THE COURT: Sustained. I think we will pause here.

13 Ladies and gentlemen, it's been a long day and I thank
14 you for your patience. I am going to ask that you all return
15 tomorrow morning at 9:30, and we will go late in the day as we
16 have today as well. So we'll give you a little morning break
17 and have you begin at 9:30.

18 Please don't discuss this case with anyone. Please
19 avoid contact with the parties and the lawyers; they cannot
20 have any contact with you, even outside by the elevators or
21 outside the courthouse. You can leave your notebooks in the
22 jury room. Have a good evening.

23 COURT SECURITY OFFICER: All rise for the jury.

24 (The jury exited the courtroom at 6:03 p.m.)

25 THE COURT: So the way to impeach with prior

1 consistent testimony is to say, for example, You are not
2 claiming any overtime, correct? Oh, no, yes, I am claiming
3 overtime. Well, you remember me asking you that question at
4 deposition? Page 50, Line 1, So and so, you are not claiming
5 any overtime, correct? Your answer, correct.

6 That's how you impeach, but you can't sort of be
7 summarizing and paraphrasing from past questions. It's become
8 a mish-mash, which is why I am sustaining these objections, all
9 right. There has to be direct testimony that was contrary to
10 what was directly stated before.

11 So -- and I think part of the problem is you are going
12 through something on your computer and you haven't marked
13 clearly where things are. You might want to print out your
14 depositions for tomorrow that you intend to use for impeachment
15 and use paper as opposed to having the jury and the Court and
16 everyone else waiting while you scroll through on a laptop to
17 try to find what it is you are looking, Mr. Tropp. All right?

18 MR. TROPP: Yes.

19 THE COURT: Okay. I have to begin a criminal trial on
20 Thursday because the Government is losing a witness. I am just
21 letting you all know that. If we are not done tomorrow, we are
22 going to take a break in this case and I will ask the jury to
23 come back next week.

24 Are there -- oh, and I need to see you all tomorrow
25 morning at 8:00 because I have returned to you the jury

1 instructions with questions and issues; they are not in final
2 form. So you all need to look at those and we will work on
3 them again tomorrow morning at 8:00, without inconveniencing
4 the jury by having the jury wait while we do that. The parties
5 must be here as well.

6 Any questions?

7 MR. TROPP: No, Your Honor, thank you.

8 MR. CUMMINGS: Your Honor, I am scheduled to leave on
9 Friday and be out the early part of next week.

10 THE COURT: Right. We told the jury when we picked
11 them that the case would be over Thursday, the latest, meaning
12 deliberating. And you think you are going to be resting
13 tomorrow evening? I am just looking at the pace that -- the
14 length of time it is taking each Plaintiff's testimony, is
15 about an average of three plus hours.

16 MR. CUMMINGS: It is going to shrink, Your Honor.

17 THE COURT: That's all I'm saying. I mean, if we can
18 get you to do your closing arguments tomorrow, I can charge the
19 jury Thursday morning while I begin another trial.

20 MR. CUMMINGS: That's what I'm hoping. For closings,
21 if we can get through them tomorrow, how long would Your Honor
22 be giving us?

23 THE COURT: I would give 25 minutes, maximum.

24 MR. CUMMINGS: Okay. And then do we get a sandwich
25 open and close, close?

1 THE COURT: Correct. I will say, doing -- having the
2 witnesses doing the math with a phone calculator is eating up a
3 lot of time. Do the math yourself and just walk them through,
4 as opposed to --

5 MR. CUMMINGS: That's what I was trying to do, and
6 then we didn't know -- we were getting leading objections.

7 THE COURT: Well, I understand. You do the math, put
8 it up there.

9 MR. CUMMINGS: Okay.

10 THE COURT: And then ask the witness your question.

11 MR. CUMMINGS: We will do that to speed things up, and
12 we then don't need to rehash a lot of the stuff that we've
13 already done. So we will clean up some of these examinations,
14 that way we can --

15 THE COURT: I think we wasted a lot of time today with
16 some of this cross-examination where we were sitting here with
17 nothing being said and a lot of math going on and sometimes
18 questions that are somewhat unnecessary or answers that are
19 unnecessary.

20 But I think our goal still is to have me charge the
21 jury Thursday morning and have them deliberating Thursday so
22 that you can have a verdict by Thursday.

23 MR. CUMMINGS: That's -- that's the goal.

24 THE COURT: Okay. Very good.

25 MR. CUMMINGS: We need to be done tomorrow, I thought

1 you meant like jury verdict and everything else.

2 THE COURT: No, no. But I need those jury
3 instructions in final form. I can't charge the jury Thursday
4 morning if they're not in that --

5 MR. CUMMINGS: No, I saw that and I -- just quickly,
6 because I saw Your Honor's concern was that the instructions
7 seem repetitive, and that was just the nature between 4.14 for
8 the employee versus independent contractor and then joint
9 employer under 4.24. So I don't know how we -- I guess we can
10 talk about that tomorrow.

11 THE COURT: Discuss it with opposing counsel to see
12 how you want to restructure them. I will see you all at 8:00.

13 MR. CUMMINGS: Okay, Your Honor.

14 THE COURT: Thank you.

15 (Witness temporarily excused.)

16 (The proceedings adjourned at 6:09 p.m.)

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an
19 accurate transcription of the proceedings in the
20 above-entitled matter.
21

22 _08/31/2023_
23 DATE



24 STEPHANIE A. McCARN, RPR
25 Official United States Court Reporter
400 North Miami Avenue, Thirteenth Floor
Miami, Florida 33128
(305) 523-5518

July 11, 2023

1

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

\$	\$5,970 [1] - 95:14 \$54,000 [4] - 96:18, 96:20, 97:19, 97:25 \$6,000 [2] - 98:4, 136:3 \$6,461.54 [2] - 98:25, 99:13 \$6.87 [1] - 164:22 \$60,000 [1] - 112:25 \$600 [6] - 60:1, 60:9, 60:10, 60:12, 93:7, 101:24 \$68.80 [1] - 165:8 \$7,000 [2] - 155:8, 175:23 \$8,000 [1] - 158:3 \$80 [2] - 144:8, 144:9 \$800 [2] - 85:16, 93:10 \$84,000 [1] - 98:21 \$84,215 [1] - 155:9 \$865 [1] - 151:22 \$894.40 [1] - 165:9 \$9,000 [1] - 155:22 \$9,110 [2] - 95:2, 95:8	113:10, 163:6 1099s [3] - 92:7, 92:15, 120:16 10:00 [1] - 70:23 10:43 [1] - 55:8 10:44 [1] - 55:12 10:58 [1] - 55:12 10:59 [2] - 55:19, 55:22 10th [1] - 26:7 11 [1] - 1:5 110 [1] - 144:9 1100 [2] - 151:7, 151:9 11:00 [2] - 127:5, 127:6 11th [11] - 62:2, 62:3, 62:14, 62:25, 63:7, 89:7, 89:16, 89:25, 90:2, 90:8, 102:17 12 [14] - 70:9, 72:18, 72:24, 80:18, 94:4, 103:3, 109:9, 110:2, 110:3, 111:11, 114:11, 164:4, 164:9, 170:21 12,002 [1] - 167:13 120 [1] - 3:8 121 [1] - 3:9 1250 [1] - 1:23 12:00 [1] - 15:3 12:26 [2] - 87:2, 87:5 12:30 [2] - 86:10, 86:18 13 [13] - 3:19, 96:25, 98:23, 110:3, 114:8, 139:3, 139:4, 163:21, 164:16, 165:1, 165:8 13-3 [1] - 1:7 132 [1] - 3:20 135 [1] - 1:16 139 [1] - 3:19 13th [4] - 25:19, 39:14, 132:24, 133:11 15 [6] - 20:5, 100:9, 110:2, 170:17, 170:19 15th [6] - 20:13, 22:2, 24:1, 67:1, 126:21, 132:25 16,000 [1] - 100:21 1667 [1] - 169:4 16th [1] - 126:21 17 [1] - 167:1 17.65 [2] - 167:7, 167:8 170 [1] - 3:10 17th [2] - 39:14, 74:9 1800 [2] - 109:5, 111:13	185 [2] - 1:8, 3:24 18th [1] - 98:5 19 [1] - 3:18 1:00 [1] - 86:19 1:30 [2] - 15:5, 86:24 1:37 [1] - 88:2 1:38 [1] - 88:18 1st [14] - 66:19, 94:23, 94:25, 102:14, 102:22, 141:2, 141:5, 141:12, 141:17, 141:18, 146:11, 148:9, 156:3, 163:20	141:2, 141:5, 142:2, 144:5, 145:6, 145:8, 145:14, 146:11, 146:22, 148:6, 152:4, 154:23, 155:1, 155:4, 155:10, 155:18, 155:23, 156:2, 156:4, 156:9, 156:11, 156:15, 156:17, 156:24, 157:2, 157:8, 157:22, 158:7, 159:5, 161:8, 163:7, 163:20, 166:16, 166:18, 170:10, 170:19, 171:10, 171:14, 171:17 2021/22 [1] - 160:15 2021/2022 [2] - 66:15, 160:6 2022 [63] - 5:20, 20:5, 20:13, 24:1, 25:18, 25:19, 26:2, 28:2, 42:4, 66:24, 78:22, 79:4, 81:14, 82:8, 83:8, 83:15, 83:18, 90:8, 90:18, 90:20, 90:21, 92:10, 92:11, 92:13, 92:14, 92:15, 94:19, 94:23, 94:25, 104:5, 104:23, 106:21, 106:23, 106:24, 112:25, 113:6, 113:9, 113:13, 113:15, 115:4, 128:18, 128:19, 131:17, 156:3, 157:22, 157:24, 158:1, 158:5, 158:7, 158:10, 159:5, 159:9, 159:16, 159:20, 161:19, 167:14, 167:16, 167:21, 167:24, 168:14, 171:10 2022/2021 [2] - 163:4, 171:11 2023 [2] - 1:5, 18:17 21 [10] - 6:18, 6:21, 13:2, 13:5, 14:15, 15:17, 15:20, 15:22, 16:6, 18:2 2100 [1] - 1:23 21st [2] - 145:8, 145:14 22 [2] - 17:22, 116:13 22-cv-22671-CMA [1] - 1:2
	0		2	
	08/31/2023 [1] - 185:22		2 [6] - 1:11, 68:22, 77:8, 168:18, 176:15, 179:16 2,117.65 [1] - 166:22 2,17.65 [1] - 167:1 2,200 [1] - 150:21 2,500 [1] - 168:16 20 [14] - 3:20, 22:8, 82:8, 100:9, 110:17, 132:11, 132:12, 165:3, 167:8, 168:20, 170:17, 170:19, 170:22, 171:5 20.84 [2] - 168:19, 168:20 2000 [1] - 131:16 2010 [2] - 122:6, 122:7 2016 [1] - 56:23 2019 [1] - 122:15 2020 [23] - 9:7, 9:8, 9:9, 28:4, 43:15, 122:13, 122:14, 126:22, 126:24, 134:11, 134:16, 135:7, 135:14, 140:11, 148:5, 163:20, 170:9, 170:10, 170:25, 171:14, 171:20, 174:24 2020/21 [1] - 170:6 2021 [67] - 28:5, 29:8, 29:11, 31:18, 61:4, 61:22, 62:14, 74:9, 81:14, 91:21, 92:9, 93:2, 98:11, 113:3, 113:4, 113:19, 113:20, 113:25, 114:12, 114:14, 114:17, 114:23, 126:17, 134:11, 134:19, 140:12,	
	1			
	1 [5] - 1:8, 77:9, 90:1, 160:20, 182:4 1,000 [2] - 160:16, 171:9 1,082 [2] - 161:23, 171:16 1,100 [1] - 151:22 1,265 [1] - 93:19 1,560 [1] - 175:2 10 [3] - 45:4, 66:14, 140:9 10,000 [1] - 168:12 100 [1] - 150:20 101 [1] - 3:8 1092 [1] - 161:25 1099 [13] - 8:17, 8:22, 92:12, 93:1, 93:2, 93:3, 93:15, 98:10, 113:5, 113:8,			

July 11, 2023

2

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>220 [1] - 58:4 23,000 [1] - 113:5 23,465 [1] - 93:9 230-4884 [1] - 1:17 23rd [3] - 26:1, 95:15, 158:5 24 [1] - 3:19 24th [1] - 114:20 25 [2] - 104:25, 183:23 25,000 [4] - 113:14, 113:16, 113:17, 118:21 2500 [1] - 168:13 25th [1] - 134:15 26th [3] - 66:20, 102:23, 134:15 27th [2] - 26:2, 61:4 280 [1] - 150:21</p>	<p>167:10, 167:12 38 [1] - 140:2 3:00 [1] - 70:22 3:15 [1] - 121:17 3:24 [1] - 90:8 3:30 [1] - 121:12 3:31 [2] - 128:24, 129:2 3:44 [2] - 129:2, 129:4 3rd [1] - 26:5</p>	<p>54 [1] - 3:6 54,000 [2] - 96:22, 98:19 56 [1] - 3:7 57,920 [1] - 157:25 5700 [3] - 101:4, 118:12, 118:13 5750 [1] - 1:20 580 [1] - 146:6 5:30 [1] - 105:18</p>	<p>16:10, 16:19, 68:1, 77:6, 127:6, 159:23, 165:17, 165:20, 165:22, 166:7, 166:8, 168:22 8,000 [3] - 158:10, 158:11, 158:16 8-0 [1] - 168:23 80,000 [3] - 113:6, 113:9, 113:11 800 [4] - 93:20, 93:21, 93:22, 110:17 81 [1] - 165:20 814-2035 [1] - 1:21 84,215 [1] - 155:5 84,250 [1] - 163:6 889 [2] - 161:13, 161:25 890 [1] - 161:25 8:00 [4] - 127:5, 182:25, 183:3, 185:12 8:24 [2] - 1:6, 4:1 8:25 [1] - 4:15 8:26 [1] - 4:19 8th [7] - 61:17, 61:18, 61:22, 90:18, 90:20, 90:23, 102:16</p>	<p>55:8, 55:12, 55:19, 55:22, 70:2, 70:5, 134:23, 134:24, 148:14, 166:19, 167:14, 167:20, 171:2 ability [1] - 29:4 able [29] - 10:13, 13:11, 13:14, 14:21, 21:11, 42:24, 46:6, 49:10, 50:3, 53:12, 59:20, 61:20, 66:21, 67:13, 67:15, 75:9, 79:12, 102:9, 103:17, 120:23, 128:4, 133:15, 133:16, 135:4, 137:22, 147:15, 153:5, 176:21, 177:19 above-entitled [1] - 185:20 abrupt [1] - 150:15 accept [2] - 69:12, 177:10 accepted [3] - 9:16, 106:14, 177:9 access [21] - 13:14, 13:15, 13:17, 13:18, 14:3, 28:24, 46:8, 46:11, 49:9, 49:16, 78:22, 78:25, 79:14, 80:1, 80:8, 83:6, 83:9, 83:13, 128:4, 128:7, 155:13 accident [3] - 131:10, 131:20 according [6] - 69:5, 91:6, 97:3, 146:16, 163:5, 163:18 account [1] - 138:6 accounting [8] - 29:21, 29:22, 30:2, 30:12, 32:10, 138:7, 153:14 accounting@ AvantAssurance.com [3] - 29:25, 138:10, 138:23 accounts [1] - 138:5 accurate [2] - 22:1, 185:19 acquaintance [1] - 122:10 active [1] - 141:16 actively [1] - 25:3 actual [1] - 30:1 ad [2] - 57:20, 58:18 add [6] - 90:19, 95:17, 99:14, 139:19,</p>
3	4	6		
<p>3 [4] - 3:17, 92:19, 92:21, 167:19 3,000 [2] - 175:4, 175:13 3.44 [4] - 164:23, 164:25, 165:1, 165:3 30 [9] - 16:16, 22:8, 43:19, 86:9, 103:11, 143:1, 143:2, 143:3, 166:11 30,000 [1] - 98:20 30-something [1] - 117:11 305 [5] - 1:17, 1:21, 1:24, 2:6, 185:25 30th [2] - 26:4, 39:7 31 [3] - 78:22, 79:3, 164:17 31,000 [3] - 101:14, 117:9, 117:14 31st [12] - 67:2, 78:21, 134:19, 141:11, 141:14, 141:22, 148:6, 154:23, 156:15, 163:20, 170:13 32 [1] - 166:9 320 [3] - 136:9, 136:12, 136:15 33 [1] - 3:5 33128 [2] - 2:6, 185:24 33134-5267 [1] - 1:24 33140-2316 [1] - 1:20 33146-1878 [1] - 1:16 34 [4] - 166:7, 166:13, 166:14, 167:12 35.29 [4] - 167:2, 167:3, 167:4, 167:5 353 [3] - 167:9,</p>	<p>4 [16] - 3:18, 3:18, 3:24, 19:21, 19:24, 21:14, 60:21, 60:22, 68:23, 81:15, 89:9, 150:3, 153:23, 166:8, 168:12, 168:24 4.14 [1] - 185:7 4.24 [1] - 185:9 40 [14] - 6:8, 6:13, 16:14, 16:20, 43:19, 59:1, 86:9, 109:14, 110:11, 110:13, 110:17, 110:20, 111:5 400 [2] - 2:5, 185:24 41.67 [2] - 168:17, 168:18 412 [1] - 164:17 416.80 [1] - 168:24 42 [1] - 114:8 44 [1] - 114:10 44.72 [1] - 165:2 440 [1] - 58:5 450 [1] - 146:20 47 [1] - 17:21 47,700 [1] - 96:14 47,796 [1] - 96:11 49 [4] - 139:19, 139:23, 140:9 490 [1] - 139:21 4:00 [1] - 70:23 4A [1] - 1:20 4th [6] - 40:4, 40:9, 40:10, 40:11, 82:8, 83:8</p>	<p>6 [1] - 73:23 6,000 [2] - 135:23, 136:6 6.87 [1] - 164:21 60 [15] - 3:18, 70:10, 97:7, 99:12, 103:6, 109:9, 109:14, 148:18, 149:2, 163:22, 164:20, 166:21, 166:22, 168:15, 168:16 60,000 [3] - 113:7, 113:11, 113:17 600 [7] - 110:7, 135:16, 135:19, 135:22, 136:2, 160:13, 160:14 62 [2] - 103:5 630 [1] - 150:20 640 [1] - 146:17 65 [1] - 178:23 66 [1] - 179:16 670 [1] - 147:5 68.8 [1] - 165:6 688 [1] - 80:22 6:03 [1] - 181:24 6:09 [2] - 1:6, 185:16 6th [1] - 26:7</p>	<p>9 [29] - 14:24, 15:15, 15:18, 15:21, 15:23, 16:7, 16:9, 16:19, 70:2, 70:5, 134:23, 134:24, 148:14, 163:25, 165:20, 166:19, 167:14, 167:19, 167:20, 171:2 9,000 [2] - 165:17, 165:22 92 [1] - 3:17 955 [1] - 80:13 9:00 [9] - 70:22, 103:2, 167:22, 168:1, 168:3 9:04 [2] - 22:13, 22:17 9:26 [2] - 22:17, 22:19 9:30 [2] - 181:15, 181:17 9th [5] - 17:4, 18:17, 18:23, 19:1, 25:18</p>	
	5	7	9	
<p>5 [5] - 3:5, 66:7, 66:10, 66:14, 67:6 5,000 [1] - 119:3 5,360 [1] - 163:17 5/9 [1] - 38:20 50 [2] - 3:6, 182:4 523-5518 [2] - 2:6, 185:25</p>		<p>7 [3] - 3:19, 24:5, 24:6 7,000 [2] - 175:16, 175:18 710 [1] - 146:24 72 [2] - 165:23, 166:14 72,000 [2] - 166:11, 166:14 740 [1] - 147:8 770 [1] - 1:16 777-0377 [1] - 1:24 7:19 [1] - 82:8 7th [1] - 90:21</p>		<p>A</p>
		8		<p>a.m [29] - 1:6, 4:1, 4:15, 4:19, 15:15, 15:18, 15:21, 15:23, 16:7, 16:9, 16:19, 22:13, 22:17, 22:19,</p>
		8 [15] - 15:15, 15:18,		

July 11, 2023

3

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>140:8, 155:20 added [3] - 90:13, 146:2, 163:9 addition [1] - 97:19 additional [2] - 98:2, 166:9 address [10] - 19:11, 21:21, 29:25, 30:1, 83:9, 119:8, 132:16, 132:19, 132:20 addressed [3] - 21:8, 135:1, 154:16 adjourned [1] - 185:16 admission [1] - 47:20 ADMITTED [1] - 3:15 advance [7] - 67:9, 67:10, 67:20, 89:20, 136:20, 142:24, 175:1 Advance [1] - 138:4 advances [3] - 79:8, 93:25, 96:5 advantage [1] - 135:4 advise [1] - 23:8 afternoon [11] - 15:1, 15:3, 15:5, 21:18, 37:6, 90:8, 90:12, 101:22, 121:24, 121:25, 128:22 afternoons [2] - 135:11, 135:12 afterwards [3] - 72:2, 72:6, 82:24 agencies [6] - 51:3, 54:8, 54:13, 54:14, 106:11, 174:18 agency [7] - 51:4, 51:17, 51:24, 59:17, 73:20, 122:9 agent [51] - 8:15, 8:16, 8:18, 9:10, 9:24, 10:7, 12:2, 12:9, 12:15, 12:16, 13:12, 13:22, 16:16, 16:18, 27:3, 28:1, 32:5, 36:5, 36:9, 38:16, 41:14, 44:6, 44:16, 47:1, 48:23, 50:2, 50:3, 51:20, 52:2, 58:18, 59:20, 62:7, 62:10, 63:2, 64:4, 64:18, 66:3, 68:6, 68:11, 75:21, 90:17, 104:6, 111:25, 112:1, 112:8, 112:16, 112:18, 128:14, 135:10, 135:11 agents [84] - 5:12, 5:17, 6:6, 6:9, 6:13,</p>	<p>6:15, 6:18, 6:21, 7:1, 7:12, 7:16, 7:25, 10:2, 12:24, 13:2, 13:5, 13:8, 14:15, 14:21, 14:24, 15:1, 15:10, 15:17, 15:20, 15:22, 15:25, 16:6, 16:18, 17:17, 17:19, 17:23, 17:24, 18:3, 19:14, 19:18, 20:20, 20:25, 21:8, 23:3, 23:9, 23:17, 24:2, 25:3, 25:11, 25:13, 25:23, 26:1, 29:2, 29:5, 32:4, 38:25, 40:20, 41:5, 41:10, 43:16, 44:10, 45:12, 45:16, 49:19, 51:2, 54:13, 54:14, 57:22, 64:1, 64:11, 64:13, 64:22, 65:12, 69:22, 73:6, 77:1, 77:11, 77:22, 78:4, 78:14, 97:15, 102:1, 116:4, 124:7, 133:19, 135:6, 160:4 agents [1] - 21:24 ago [4] - 17:4, 17:15, 19:4, 19:8 agree [13] - 20:12, 41:3, 41:8, 43:5, 43:11, 44:18, 95:25, 113:19, 115:6, 115:15, 116:1, 167:23, 178:5 agreed [1] - 66:5 agreement [12] - 59:23, 105:16, 123:2, 123:6, 125:16, 126:8, 150:12, 170:13, 173:1, 173:17, 174:3, 174:20 ahead [3] - 55:9, 71:22, 90:10 Alberto [1] - 91:4 Alcala [5] - 3:7, 55:15, 56:8, 104:14, 104:19 ALCALA [1] - 55:23 Alexa [1] - 33:16 Alice [1] - 5:6 Alix [14] - 3:4, 4:13, 19:11, 25:1, 38:20, 58:23, 63:8, 64:16, 73:9, 84:4, 89:22, 137:7, 149:14 ALIX [2] - 4:20, 19:11 Alix@ AvantAssurance. com [2] - 20:3, 21:21</p>	<p>allow [4] - 6:23, 63:20, 129:10, 130:20 allowed [10] - 10:18, 14:3, 47:2, 81:6, 84:6, 103:20, 129:13, 129:25, 177:5, 179:21 almost [6] - 103:11, 115:22, 117:11, 150:23, 152:14, 175:4 altogether [2] - 140:18, 144:11 ALTONAGA [1] - 1:12 Amazon [1] - 84:19 Ambetter [7] - 54:10, 54:13, 77:13, 77:18, 139:8, 140:13, 140:14 amount [34] - 31:9, 31:10, 33:9, 33:10, 67:12, 93:19, 94:12, 95:4, 95:9, 95:25, 96:2, 96:7, 98:14, 100:25, 113:2, 114:5, 118:5, 118:9, 126:1, 150:23, 151:12, 151:24, 151:25, 155:10, 155:21, 157:19, 159:13, 163:3, 175:3, 175:19, 178:1 amounts [5] - 59:19, 94:16, 149:9, 150:22, 176:1 Ana [6] - 24:14, 64:15, 64:17, 73:8 Andrea [15] - 26:11, 26:19, 43:12, 46:11, 47:13, 61:6, 61:12, 63:6, 104:3, 115:7, 123:13, 123:19, 127:11, 135:9, 147:21 ANDREA [1] - 1:8 Anna [1] - 94:11 annual [1] - 11:7 annuity [2] - 58:9, 58:12 answer [25] - 44:25, 45:6, 71:13, 71:14, 71:24, 104:21, 105:19, 107:5, 109:13, 109:14, 110:20, 111:7, 111:8, 112:1, 112:2, 114:16, 116:16, 164:2, 176:15, 176:21, 177:2, 179:3, 179:19,</p>	<p>179:20, 182:5 ANSWER [2] - 18:1, 18:4 answered [6] - 50:6, 50:9, 118:10, 172:23, 179:9, 181:4 answering [1] - 110:18 answers [1] - 184:18 Anthem [4] - 140:21, 142:1, 142:5, 150:21 anxiety [1] - 90:13 anyway [1] - 172:3 apologies [1] - 4:17 apologize [2] - 131:18, 165:3 app [2] - 57:14, 165:18 appear [2] - 69:2, 78:16 APPEARANCES [2] - 1:13, 2:1 application [1] - 35:9 applications [4] - 85:7, 85:9, 85:15, 85:17 applied [4] - 57:24, 58:20, 59:1, 85:10 apply [1] - 84:23 applying [4] - 57:20, 58:24, 59:10, 85:12 appointment [1] - 132:24 appointments [1] - 65:13 approach [3] - 121:15, 163:12, 174:10 approached [1] - 102:8 approximate [1] - 59:19 April [10] - 106:25, 126:14, 126:16, 126:17, 152:3, 152:4, 152:8, 152:9, 154:12, 167:17 Apt [1] - 1:20 area [1] - 71:6 arguments [1] - 183:18 armed [1] - 91:8 arrange [3] - 131:1, 131:2, 131:5 arranged [1] - 132:5 arrangement [4] - 124:22, 125:19, 125:24, 125:25 arrangements [1] - 54:9 arrivals [1] - 21:20 arrive [2] - 41:2, 89:24</p>	<p>arrived [2] - 75:7, 91:8 arrow [1] - 157:15 aside [1] - 105:15 assistant [2] - 35:3 assumed [2] - 31:12, 33:7 assumes [2] - 54:16, 54:24 Assurance [12] - 57:11, 57:12, 57:13, 58:19, 60:9, 69:21, 93:3, 110:14, 116:14, 122:9, 132:18, 138:4 ASSURANCE [1] - 1:8 attach [3] - 74:25, 75:11, 75:23 attached [4] - 51:21, 75:5, 75:15, 85:21 attachment [1] - 76:6 attending [1] - 133:5 attention [2] - 82:4, 150:23 attorney [5] - 117:17, 117:20, 117:23, 118:4, 119:14 August [4] - 42:4, 90:21, 104:23, 106:23 authorize [2] - 83:17, 128:14 authorized [4] - 83:13, 83:14, 103:21 available [4] - 37:2, 66:22, 70:4, 176:19 Avant [175] - 5:7, 5:22, 6:19, 7:13, 7:21, 8:13, 8:18, 9:3, 9:5, 9:22, 9:25, 10:8, 10:10, 10:25, 11:9, 11:21, 11:24, 12:1, 12:7, 12:25, 15:14, 16:22, 17:17, 20:16, 21:9, 24:2, 25:10, 25:14, 26:13, 26:16, 27:13, 29:2, 29:22, 30:12, 33:7, 33:20, 34:20, 36:6, 37:10, 37:22, 38:1, 38:7, 41:14, 43:3, 45:10, 45:19, 45:21, 46:10, 46:16, 47:1, 47:13, 47:25, 48:9, 50:25, 51:2, 51:18, 51:20, 51:21, 52:2, 54:9, 57:11, 57:12, 57:13, 57:19, 58:19, 59:2, 60:8, 61:25, 62:17, 63:2, 63:14, 63:17, 65:9, 66:15, 67:23,</p>
---	--	---	--	---

July 11, 2023

4

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

68:6, 68:8, 69:21, 74:5, 74:8, 74:22, 76:11, 84:3, 92:3, 92:6, 93:3, 93:25, 105:6, 105:17, 110:14, 111:25, 112:16, 114:13, 115:7, 115:25, 116:14, 117:8, 120:20, 121:3, 122:9, 122:12, 122:16, 123:4, 123:7, 123:10, 123:20, 123:24, 124:5, 124:10, 126:3, 126:20, 127:8, 127:19, 127:24, 130:8, 130:18, 131:2, 131:9, 131:16, 132:17, 133:10, 133:19, 133:24, 134:7, 134:8, 134:11, 135:7, 137:9, 137:11, 137:15, 137:23, 138:22, 139:17, 141:24, 142:3, 142:17, 143:10, 146:15, 146:18, 147:4, 147:7, 148:12, 149:4, 149:18, 149:23, 151:12, 155:1, 155:4, 155:9, 157:8, 157:12, 157:16, 157:19, 157:24, 158:4, 158:7, 159:5, 162:6, 163:5, 163:18, 170:11, 170:12, 170:15, 171:1, 171:6, 172:10, 172:25, 173:13, 174:2, 174:20, 174:24, 176:5, 178:4 AVANT ^[1] - 1:8 Avant's ^[9] - 5:12, 5:17, 8:9, 10:12, 32:10, 59:3, 104:7, 104:8, 134:21 AvantAssurance.com ^[1] - 19:12 Ave ^[2] - 1:16, 1:20 Avenue ^[2] - 2:5, 185:24 average ^[9] - 70:10, 73:10, 155:6, 158:1, 166:5, 175:16, 175:18, 175:19,	183:15 avoid ^[2] - 86:23, 181:19 award ^[1] - 101:10 aware ^[4] - 4:4, 47:25, 50:24, 54:12 B balance ^[3] - 101:7, 117:13, 117:24 bank ^[1] - 31:11 base ^[1] - 174:18 baseball ^[1] - 70:13 based ^[12] - 39:5, 54:2, 69:14, 120:15, 137:19, 144:2, 163:8, 173:24, 174:16, 174:17, 176:1, 176:12 basis ^[6] - 25:22, 31:16, 44:7, 83:12, 90:14, 99:3 bathroom ^[1] - 72:22 BATISTA ^[1] - 1:4 Batista ^[4] - 24:18, 47:14, 73:9, 123:13 BCBSTX ^[2] - 142:8, 142:12 Beach ^[1] - 1:20 beach ^[1] - 179:6 bearing ^[1] - 20:10 became ^[7] - 5:20, 8:23, 25:11, 62:7, 62:10, 64:18, 140:25 become ^[3] - 36:5, 165:23, 182:7 becoming ^[1] - 24:10 BEFORE ^[1] - 1:12 began ^[10] - 62:1, 66:1, 67:5, 67:8, 68:9, 78:15, 78:17, 102:12, 134:10, 175:17 begin ^[9] - 9:18, 66:19, 141:12, 141:16, 156:1, 181:17, 182:19, 183:19 beginning ^[10] - 17:6, 66:25, 74:16, 74:19, 97:10, 97:12, 105:9, 105:15, 125:8, 126:5 behind ^[2] - 64:15, 64:17 beige ^[1] - 7:8 below ^[2] - 82:5, 83:20 benefits ^[1] - 9:1 better ^[3] - 45:16, 72:24, 135:4	between ^[12] - 43:19, 50:21, 72:12, 79:19, 100:9, 109:14, 122:10, 150:10, 153:12, 173:12, 180:23, 185:7 BH ^[1] - 150:20 big ^[1] - 151:25 bigger ^[2] - 5:25, 94:8 billing ^[1] - 76:5 birthday ^[1] - 61:20 bit ^[5] - 26:23, 73:15, 86:2, 88:24, 94:8 black ^[1] - 7:7 blaming ^[3] - 106:10, 119:10, 119:12 Blue ^[18] - 75:22, 76:2, 76:5, 76:7, 76:13, 76:20, 85:1, 85:5, 85:6, 142:14, 142:17, 142:21, 150:20, 150:21 Blvd ^[1] - 1:23 board ^[1] - 59:19 boat ^[1] - 91:15 Bob ^[8] - 8:7, 12:19, 12:21, 63:11, 76:8, 76:16, 83:7, 83:9 BOB ^[1] - 8:7 bonus ^[19] - 68:25, 69:15, 78:3, 78:4, 78:6, 97:17, 97:20, 97:23, 97:24, 98:1, 98:6, 98:9, 98:13, 98:14, 115:4, 160:9, 160:12, 162:14, 181:10 bonuses ^[17] - 43:6, 43:12, 43:22, 44:8, 68:20, 68:22, 68:23, 69:1, 69:5, 77:16, 98:2, 98:3, 98:16, 98:20, 180:15, 180:24 born ^[1] - 122:3 boss ^[6] - 14:13, 14:14, 82:13, 82:14, 82:15, 82:17 bothered ^[1] - 80:23 bottom ^[1] - 145:13 boy ^[1] - 57:6 boys ^[2] - 57:6, 57:7 break ^[12] - 22:9, 22:15, 72:22, 85:24, 86:10, 86:15, 113:22, 121:10, 121:12, 128:20, 181:16, 182:22 BRIAN ^[1] - 1:14 brian @	fairlawattorney.com ^[1] - 1:17 brief ^[1] - 22:10 Bright ^[4] - 98:4, 143:6, 143:7, 143:10 Brigitte ^[2] - 81:24 bring ^[16] - 4:9, 4:14, 22:18, 45:17, 45:19, 45:22, 45:23, 46:3, 46:4, 84:9, 84:11, 132:5, 133:24, 134:1, 134:3, 134:5 brought ^[4] - 46:3, 57:10, 131:9, 133:19 build ^[3] - 52:16, 52:25, 53:14 buildings ^[1] - 52:20 built ^[1] - 91:23 bunch ^[2] - 45:6, 49:8 business ^[3] - 63:17, 91:25, 106:17 busy ^[1] - 47:5 buy ^[3] - 45:16, 84:14, 84:16 BY ^[124] - 2:4, 5:2, 5:16, 6:11, 9:20, 12:14, 18:16, 20:1, 20:9, 21:16, 22:24, 24:7, 25:17, 32:2, 33:15, 34:17, 35:15, 35:19, 36:4, 36:16, 36:20, 37:3, 38:19, 39:13, 40:3, 40:13, 42:2, 42:15, 43:20, 44:2, 44:24, 46:25, 47:23, 48:18, 50:1, 50:15, 54:6, 54:19, 56:3, 58:17, 60:23, 68:4, 72:4, 72:10, 73:25, 74:21, 77:10, 80:17, 80:21, 81:17, 83:24, 84:5, 84:21, 85:4, 88:23, 89:4, 89:12, 90:6, 92:23, 93:13, 94:7, 95:1, 97:13, 99:11, 100:16, 101:20, 102:7, 103:15, 105:5, 105:14, 107:16, 109:3, 109:22, 110:4, 111:10, 111:23, 112:14, 112:24, 114:3, 114:21, 115:23, 117:7, 118:1, 118:14, 120:6, 120:14, 121:23, 123:18, 129:8, 129:23, 132:13, 139:5,	142:15, 148:24, 149:21, 150:5, 151:20, 153:25, 154:22, 156:23, 159:3, 159:25, 160:18, 160:22, 162:23, 163:2, 163:14, 164:7, 164:14, 165:7, 165:21, 166:25, 170:2, 171:4, 172:15, 172:24, 173:8, 173:21, 174:14, 175:10, 179:15, 180:3, 180:13, 181:7 C calculate ^[2] - 99:3, 163:15 calculation ^[4] - 31:9, 97:3, 144:1, 158:12 calculations ^[1] - 97:4 calculator ^[2] - 165:18, 184:2 cannot ^[7] - 7:11, 13:8, 13:10, 13:14, 15:22, 104:4, 181:19 car ^[8] - 73:3, 131:10, 131:11, 131:20, 132:2, 132:4 care ^[4] - 41:4, 41:6, 177:16, 179:17 Career ^[1] - 35:2 CARLOS ^[1] - 1:4 Carlos ^[16] - 23:19, 24:20, 38:22, 39:3, 41:13, 47:14, 48:3, 48:10, 48:11, 48:21, 73:9, 91:7, 94:11, 104:14, 104:19 carpenter ^[3] - 52:15, 52:24, 53:8 carpenters ^[1] - 52:22 carpentry ^[1] - 53:4 carrier ^[1] - 139:9 carriers ^[3] - 76:23, 77:20, 80:24 case ^[17] - 14:23, 20:19, 22:11, 52:14, 53:11, 55:6, 86:23, 108:14, 116:1, 117:3, 128:22, 154:10, 174:19, 177:6, 181:18, 182:22, 183:11 CASE ^[1] - 1:2 caught ^[1] - 150:23 CECILIA ^[1] - 1:12
---	---	---	--	--

July 11, 2023

5

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>cell [3] - 75:18, 76:1, 82:21</p> <p>cells [1] - 140:5</p> <p>cellular [1] - 11:23</p> <p>center [22] - 5:7, 5:9, 5:12, 5:17, 5:20, 6:5, 6:12, 8:12, 8:23, 13:13, 15:12, 20:15, 20:18, 20:21, 20:24, 21:1, 23:13, 24:11, 25:7, 27:12, 70:24, 148:1</p> <p>certain [6] - 35:16, 35:23, 52:4, 176:19, 177:25</p> <p>Certificate..... [1] - 3:24</p> <p>certification [1] - 50:19</p> <p>certifications [1] - 53:3</p> <p>certify [1] - 185:18</p> <p>chance [1] - 63:25</p> <p>change [2] - 67:7, 176:1</p> <p>changed [2] - 126:16, 167:17</p> <p>changes [4] - 21:18, 41:16, 42:9, 150:15</p> <p>characterize [1] - 43:8</p> <p>charge [4] - 153:12, 183:18, 184:20, 185:3</p> <p>chart [4] - 18:5, 79:15, 161:1, 170:21</p> <p>chat [1] - 104:1</p> <p>check [7] - 33:10, 33:11, 49:10, 50:3, 60:6, 79:15, 175:1</p> <p>checked [6] - 30:20, 30:21, 31:3, 31:5, 31:8, 33:4</p> <p>CHIEF [1] - 1:12</p> <p>children [1] - 57:2</p> <p>choice [1] - 177:12</p> <p>choose [17] - 14:19, 14:21, 15:20, 15:23, 18:10, 37:13, 37:14, 37:23, 37:24, 39:1, 39:4, 39:5, 177:15, 180:23</p> <p>chose [3] - 176:7, 176:23, 178:3</p> <p>Christopher [2] - 64:14, 73:8</p> <p>Cigna [7] - 143:12, 143:14, 143:18, 143:20, 144:2, 144:4</p> <p>citing [1] - 158:19</p> <p>citizenship [1] -</p>	<p>132:25</p> <p>claim [1] - 180:14</p> <p>claiming [5] - 99:25, 118:6, 182:2, 182:4</p> <p>clarified [1] - 114:14</p> <p>clarify [1] - 176:9</p> <p>clean [1] - 184:13</p> <p>clear [7] - 26:23, 43:1, 111:11, 119:15, 137:14, 147:9, 178:14</p> <p>clearly [1] - 182:13</p> <p>click [3] - 71:22, 71:24, 72:11</p> <p>clicking [2] - 75:21</p> <p>client [15] - 23:19, 24:16, 27:20, 53:14, 63:9, 74:13, 75:11, 75:19, 75:20, 76:9, 110:23, 111:4, 118:3, 127:16, 147:11</p> <p>Client [1] - 74:1</p> <p>client's [1] - 76:16</p> <p>clients [22] - 8:3, 8:9, 21:8, 22:2, 23:25, 35:7, 49:12, 49:17, 50:24, 52:12, 65:2, 71:4, 73:16, 75:9, 136:7, 151:2, 155:21, 157:5, 159:14, 159:15, 164:2, 178:1</p> <p>clock [4] - 120:20, 121:3, 121:4</p> <p>close [3] - 133:16, 183:25</p> <p>closed [3] - 40:11, 49:17, 141:16</p> <p>closing [4] - 141:13, 161:7, 161:17, 183:18</p> <p>closings [1] - 183:20</p> <p>clue [1] - 106:4</p> <p>code [2] - 46:8, 46:11</p> <p>colleague [1] - 38:15</p> <p>collect [2] - 67:15, 124:13</p> <p>collected [1] - 175:9</p> <p>Collins [1] - 1:20</p> <p>Colombia [6] - 11:16, 13:6, 65:11, 65:17, 74:22, 159:13</p> <p>color [1] - 7:8</p> <p>column [4] - 139:25, 140:4, 143:22, 147:10</p> <p>Column [2] - 140:24</p> <p>columns [1] - 28:17</p> <p>Combine [1] - 172:16</p>	<p>combined [1] - 172:18</p> <p>Combined [5] - 173:13, 173:16, 173:22, 174:19, 174:21</p> <p>comfort [3] - 84:14, 84:15, 121:10</p> <p>coming [5] - 18:6, 107:17, 131:10, 159:14, 176:16</p> <p>commission [59] - 29:14, 30:4, 30:11, 30:19, 31:5, 31:16, 32:9, 32:12, 32:23, 33:4, 102:3, 102:10, 102:13, 113:24, 137:8, 137:11, 137:18, 137:22, 137:25, 138:12, 138:21, 139:1, 140:20, 141:24, 142:16, 143:5, 143:17, 143:20, 144:2, 144:5, 144:15, 145:5, 145:6, 145:23, 146:1, 146:4, 146:7, 147:3, 147:6, 149:3, 149:6, 150:19, 151:11, 151:13, 152:1, 154:11, 157:12, 157:16, 158:6, 159:4, 159:8, 163:9, 169:10, 173:9, 173:24, 173:25, 174:16, 174:17, 176:12</p> <p>commissions [42] - 28:2, 29:7, 29:11, 30:21, 31:3, 43:5, 43:12, 43:21, 44:8, 45:3, 49:9, 68:19, 77:16, 79:9, 80:3, 93:14, 93:17, 93:21, 93:24, 96:3, 97:16, 97:19, 101:8, 101:11, 101:12, 113:3, 113:19, 114:15, 114:16, 114:22, 117:14, 117:25, 118:7, 118:16, 118:19, 119:3, 119:21, 150:10, 173:11, 176:1, 180:15, 180:24</p> <p>commit [1] - 27:15</p> <p>commitment [1] - 177:25</p> <p>common [2] - 122:10</p>	<p>communicate [1] - 27:15</p> <p>communication [1] - 21:19</p> <p>communications [1] - 132:17</p> <p>companies [12] - 65:14, 68:19, 68:21, 69:2, 124:20, 125:8, 125:10, 152:12, 155:14, 174:17, 175:7, 176:2</p> <p>company [35] - 11:16, 13:19, 13:20, 28:17, 32:23, 32:24, 33:1, 34:21, 35:1, 35:2, 55:2, 60:17, 63:5, 69:4, 69:11, 89:22, 91:18, 91:20, 91:21, 91:22, 104:16, 105:22, 106:3, 106:6, 106:10, 113:1, 113:17, 139:10, 142:13, 143:4, 143:13, 144:13, 146:5, 154:10, 172:16</p> <p>Company [1] - 147:1</p> <p>company's [1] - 77:5</p> <p>compare [3] - 79:12, 79:16, 80:11</p> <p>compared [1] - 96:23</p> <p>comparing [1] - 80:2</p> <p>compensation [5] - 68:8, 68:17, 69:5, 69:8, 69:15</p> <p>complain [1] - 66:10</p> <p>complained [5] - 23:19, 23:22, 43:21, 44:3, 66:9</p> <p>complaints [1] - 50:24</p> <p>complete [2] - 58:14, 161:18</p> <p>completely [1] - 177:12</p> <p>Composite [14] - 3:18, 3:19, 3:19, 19:21, 19:24, 21:13, 24:5, 24:6, 139:2, 139:3, 139:4, 150:2, 153:22, 160:20</p> <p>compound [1] - 119:25</p> <p>computer [16] - 10:8, 10:10, 10:13, 10:14, 10:15, 10:21, 12:4, 14:4, 45:22, 46:5, 63:19, 71:17, 84:12, 130:10, 130:12, 182:12</p>	<p>computers [3] - 45:17, 71:14, 75:23</p> <p>concern [1] - 185:6</p> <p>concerned [5] - 67:13, 79:10, 91:3, 160:5, 160:8</p> <p>concerning [1] - 151:23</p> <p>concerns [1] - 153:20</p> <p>conclusion [2] - 44:21, 179:24</p> <p>conclusory [2] - 158:22, 158:25</p> <p>conducted [1] - 17:3</p> <p>confidential [1] - 104:4</p> <p>confirmed [2] - 20:2, 177:2</p> <p>confront [1] - 48:10</p> <p>connect [2] - 37:19, 82:22</p> <p>consent [16] - 73:13, 73:14, 73:17, 73:18, 73:19, 74:7, 74:13, 74:23, 75:4, 75:11, 75:15, 75:22, 76:4, 76:16, 76:20, 76:22</p> <p>Consent [1] - 74:1</p> <p>consents [1] - 74:13</p> <p>consider [8] - 36:17, 36:21, 45:8, 52:15, 52:20, 53:8, 63:19, 105:9</p> <p>considered [4] - 36:10, 38:15, 80:25, 83:11</p> <p>consisted [1] - 9:15</p> <p>consistent [1] - 182:1</p> <p>constitute [1] - 77:2</p> <p>construct [1] - 52:20</p> <p>consult [2] - 27:21, 27:23</p> <p>consultation [1] - 27:21</p> <p>Cont'd [4] - 22:23, 88:22, 129:7, 162:22</p> <p>contact [6] - 75:9, 86:24, 88:8, 88:9, 181:19, 181:20</p> <p>contacted [1] - 82:10</p> <p>continuation [1] - 161:24</p> <p>continue [8] - 61:25, 65:4, 75:20, 88:20, 129:6, 129:25, 130:17, 131:23</p> <p>CONTINUED [1] - 2:1</p> <p>continued [3] - 31:15, 69:3, 154:24</p> <p>continuing [1] - 69:12</p>
---	---	--	--	--

July 11, 2023

6

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>contract [4] - 9:21, 123:3, 123:6, 133:16</p> <p>contracted [3] - 13:23, 82:21, 128:16</p> <p>contractor [17] - 14:9, 33:21, 36:8, 36:21, 37:9, 45:24, 50:22, 60:3, 92:7, 105:7, 105:10, 116:1, 116:15, 172:19, 179:22, 180:5, 185:8</p> <p>contractors [6] - 21:5, 34:1, 34:2, 36:17, 38:9, 116:19</p> <p>contrary [1] - 182:9</p> <p>control [3] - 35:25, 115:12, 115:13</p> <p>conversation [7] - 48:11, 108:9, 125:19, 152:20, 152:24, 153:2, 153:8</p> <p>copied [1] - 21:22</p> <p>copy [3] - 117:15, 117:20</p> <p>Coral [2] - 1:16, 1:24</p> <p>Correct [1] - 179:19</p> <p>correct [268] - 5:7, 5:11, 6:1, 6:2, 7:4, 7:13, 7:22, 8:13, 8:14, 8:19, 8:24, 9:10, 9:11, 10:11, 10:20, 10:22, 11:20, 11:22, 11:24, 12:23, 13:1, 13:9, 14:13, 14:25, 15:1, 15:2, 15:4, 15:6, 15:13, 15:16, 16:1, 16:10, 16:11, 16:20, 16:23, 17:1, 17:13, 18:18, 18:24, 19:6, 19:7, 19:17, 19:20, 20:3, 20:4, 20:6, 20:7, 20:17, 20:23, 21:10, 23:6, 23:15, 23:18, 23:24, 24:3, 24:8, 24:9, 25:2, 25:9, 25:20, 25:21, 25:24, 26:3, 26:6, 26:9, 26:11, 27:13, 27:25, 28:2, 28:3, 28:9, 28:15, 28:18, 28:21, 29:13, 30:14, 31:25, 32:8, 32:16, 33:3, 33:22, 36:6, 39:6, 40:18, 44:14, 45:7, 51:24, 53:17, 54:10, 59:8, 59:23, 61:23, 62:1, 62:8, 62:19, 63:12, 64:3, 68:14, 68:24, 69:7, 69:13,</p>	<p>69:16, 69:20, 70:14, 71:8, 71:18, 73:21, 74:6, 75:13, 75:16, 76:3, 76:10, 76:18, 81:8, 81:12, 82:3, 82:6, 90:3, 91:1, 93:5, 93:8, 93:11, 93:16, 94:2, 95:3, 95:7, 95:13, 95:21, 96:4, 97:22, 98:24, 100:5, 101:25, 102:4, 102:10, 105:23, 108:18, 109:6, 111:17, 114:1, 115:11, 116:10, 116:12, 118:20, 119:4, 120:18, 125:5, 125:17, 126:7, 126:13, 126:16, 126:18, 126:23, 127:7, 129:11, 129:12, 129:15, 129:20, 130:18, 130:19, 131:21, 131:22, 132:7, 133:20, 134:9, 134:13, 134:17, 136:1, 136:4, 136:11, 137:9, 137:10, 137:16, 137:17, 137:21, 138:2, 138:11, 138:24, 139:11, 139:18, 139:19, 140:1, 140:7, 140:10, 141:1, 141:4, 141:24, 142:4, 142:6, 142:7, 142:19, 143:1, 144:3, 144:11, 144:12, 144:23, 145:11, 145:12, 145:22, 146:8, 146:14, 147:2, 148:2, 148:3, 148:7, 149:4, 149:6, 150:7, 151:8, 151:14, 153:1, 154:2, 154:18, 154:19, 154:24, 154:25, 155:3, 155:10, 156:12, 156:16, 156:21, 157:8, 157:9, 157:17, 157:21, 157:23, 158:8, 159:6, 159:9, 159:18, 160:2, 161:9, 161:11, 161:15, 161:20, 162:2, 162:5,</p>	<p>163:22, 164:10, 167:25, 168:1, 168:5, 170:6, 170:7, 170:8, 170:20, 170:23, 171:11, 171:16, 171:20, 172:14, 172:20, 173:2, 173:3, 173:12, 174:1, 174:3, 174:4, 174:20, 176:9, 177:14, 178:13, 182:2, 182:5, 184:1</p> <p>correction [2] - 64:23, 107:3</p> <p>corrections [1] - 65:1</p> <p>correctly [7] - 7:2, 31:13, 33:7, 49:20, 50:5, 79:9, 175:2</p> <p>CORTES [1] - 1:8</p> <p>Cortes [98] - 9:7, 9:9, 9:14, 9:24, 10:18, 13:20, 14:1, 14:8, 14:13, 28:10, 28:22, 31:12, 32:7, 57:11, 59:5, 59:6, 59:16, 59:21, 59:24, 60:2, 60:5, 60:8, 60:17, 61:11, 62:6, 62:9, 65:6, 65:23, 66:4, 66:8, 66:10, 68:16, 68:25, 69:3, 73:19, 76:13, 76:15, 76:25, 78:11, 78:18, 78:23, 79:18, 80:5, 80:19, 80:22, 81:3, 82:10, 82:11, 82:14, 83:1, 83:16, 85:7, 91:6, 94:5, 94:10, 95:8, 95:22, 96:18, 101:2, 102:8, 103:21, 106:1, 106:4, 106:10, 113:22, 114:19, 115:2, 117:13, 117:17, 117:24, 119:8, 119:13, 121:2, 122:25, 123:9, 123:16, 125:16, 126:25, 128:8, 128:11, 129:10, 129:24, 130:20, 131:1, 131:8, 132:1, 133:3, 133:7, 133:18, 136:5, 136:12, 138:5, 149:15, 150:9, 152:15, 154:3, 162:4, 162:7</p> <p>Cortes's [4] - 104:11,</p>	<p>147:20, 152:18</p> <p>counsel [6] - 34:11, 41:20, 99:6, 107:11, 108:8, 185:11</p> <p>Counsel [11] - 5:14, 6:10, 12:11, 42:13, 58:11, 72:3, 85:3, 89:2, 97:11, 108:12, 142:9</p> <p>count [1] - 158:2</p> <p>couple [2] - 39:15, 69:19</p> <p>course [17] - 31:2, 41:7, 46:9, 60:14, 60:16, 61:8, 64:20, 74:3, 77:13, 90:9, 121:6, 131:25, 141:25, 154:17, 160:24, 162:11, 177:23</p> <p>Court [4] - 2:4, 3:24, 182:15, 185:23</p> <p>COURT [158] - 1:1, 4:2, 4:3, 4:9, 4:10, 4:12, 4:14, 4:16, 4:23, 9:18, 18:9, 18:15, 22:6, 22:9, 22:12, 22:14, 22:18, 22:20, 22:22, 33:13, 35:18, 36:3, 36:15, 36:19, 36:23, 40:8, 43:18, 43:25, 44:22, 46:21, 46:24, 47:18, 47:21, 48:14, 48:17, 49:24, 50:7, 50:10, 50:12, 53:20, 53:22, 53:25, 54:3, 54:18, 55:1, 55:4, 55:7, 55:11, 55:13, 55:16, 55:18, 55:20, 56:1, 74:17, 84:2, 86:1, 86:4, 86:7, 86:10, 86:14, 86:17, 86:20, 86:22, 87:1, 87:3, 88:3, 88:8, 88:11, 88:14, 88:17, 88:19, 99:8, 99:10, 100:15, 101:18, 102:5, 103:9, 104:21, 105:2, 105:13, 107:4, 107:10, 107:13, 108:3, 108:7, 108:17, 108:20, 108:22, 109:18, 109:21, 109:24, 110:24, 111:6, 111:20, 112:10, 112:20, 112:23, 114:7, 115:21, 117:4,</p>	<p>118:11, 119:18, 120:1, 120:12, 121:9, 121:12, 121:15, 121:21, 128:20, 128:23, 128:25, 129:3, 129:5, 129:22, 148:21, 148:23, 149:20, 151:19, 156:20, 158:13, 158:17, 158:19, 158:23, 159:1, 162:17, 162:21, 165:5, 169:15, 169:19, 169:21, 172:13, 172:23, 173:6, 173:19, 174:9, 174:12, 175:6, 178:19, 179:2, 179:10, 179:25, 180:12, 181:6, 181:12, 181:23, 181:25, 182:19, 183:10, 183:17, 183:23, 184:1, 184:7, 184:10, 184:15, 184:24, 185:2, 185:11, 185:14</p> <p>court [1] - 154:20</p> <p>courtesy [3] - 23:7, 41:9</p> <p>courthouse [1] - 181:21</p> <p>courtroom [13] - 4:15, 17:1, 17:8, 22:13, 22:19, 55:8, 55:19, 56:11, 87:2, 88:18, 128:24, 129:4, 181:24</p> <p>Courtroom [1] - 1:7</p> <p>cover [2] - 67:13, 70:2</p> <p>coverage [3] - 15:11, 23:14, 25:7</p> <p>covered [1] - 21:24</p> <p>COVID [20] - 13:23, 14:1, 81:11, 81:13, 82:21, 83:19, 103:21, 128:2, 128:3, 128:8, 128:12, 128:17, 128:18, 129:11, 129:17, 129:19, 130:1, 130:2, 130:25</p> <p>coworker [2] - 90:16, 91:2</p> <p>coworkers [1] - 78:16</p> <p>create [6] - 14:18, 15:7, 15:9, 17:18, 18:2, 25:13</p>
--	--	---	--	--

July 11, 2023

7

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>created [14] - 17:15, 17:16, 24:8, 24:10, 25:7, 25:10, 25:20, 26:4, 78:8, 78:10, 78:18, 78:23, 91:21, 127:14</p> <p>creating [1] - 24:1</p> <p>credentials [1] - 12:18</p> <p>credited [2] - 79:24, 80:22</p> <p>criminal [1] - 182:19</p> <p>CRM [23] - 8:5, 8:9, 10:21, 10:24, 11:2, 11:7, 12:2, 12:5, 12:9, 12:16, 12:20, 13:2, 13:14, 14:4, 63:6, 63:11, 74:25, 75:5, 75:12, 75:24, 83:7, 83:12, 130:12</p> <p>Cross [9] - 3:5, 3:8, 3:10, 85:1, 85:5, 142:14, 142:17, 142:21, 150:20</p> <p>cross [8] - 33:13, 101:18, 108:14, 115:21, 162:17, 169:13, 169:16, 184:16</p> <p>CROSS [3] - 33:14, 101:19, 170:1</p> <p>Cross-examination [3] - 3:5, 3:8, 3:10</p> <p>cross-examination [5] - 33:13, 101:18, 162:17, 169:16, 184:16</p> <p>CROSS-EXAMINATION [3] - 33:14, 101:19, 170:1</p> <p>cross-examine [1] - 108:14</p> <p>Cuba [4] - 122:4, 122:5, 171:21, 172:4</p> <p>CUETO [4] - 1:22, 4:7, 87:4, 123:16</p> <p>Cueto [1] - 1:23</p> <p>CUMMINGS [104] - 1:15, 5:2, 5:16, 6:11, 9:20, 12:13, 12:14, 18:7, 18:12, 18:16, 20:1, 20:9, 21:16, 22:8, 22:24, 24:7, 25:17, 32:2, 33:12, 34:11, 35:13, 35:17, 36:2, 36:14, 36:18, 36:22, 40:6, 40:9, 41:20, 43:17, 43:23, 44:20, 46:20, 46:22, 47:17, 48:13, 48:15, 49:22, 50:6, 50:9,</p>	<p>50:13, 50:15, 53:21, 54:16, 54:24, 121:14, 121:23, 123:18, 129:8, 129:23, 138:25, 139:5, 142:11, 142:15, 148:24, 149:21, 150:5, 151:20, 153:25, 154:22, 156:23, 159:3, 159:25, 160:18, 160:22, 162:16, 162:19, 162:23, 163:2, 163:12, 163:14, 164:7, 164:12, 164:14, 165:7, 165:21, 166:25, 169:7, 171:3, 172:11, 172:21, 173:5, 173:18, 174:7, 174:10, 175:5, 178:16, 178:20, 178:24, 179:23, 180:11, 181:5, 181:11, 183:8, 183:16, 183:20, 183:24, 184:5, 184:9, 184:11, 184:23, 184:25, 185:5, 185:13</p> <p>Cummings [3] - 3:5, 3:6, 3:9</p> <p>current [2] - 13:19, 91:16</p> <p>custom [1] - 174:7</p> <p>customer [3] - 11:19, 65:10, 75:18</p> <p>customer's [1] - 76:1</p> <p>customers [2] - 11:11, 41:6</p> <p>customize [1] - 53:14</p>	<p>114:20</p> <p>dates [1] - 74:11</p> <p>DAY [1] - 1:11</p> <p>daylight [1] - 135:4</p> <p>days [30] - 37:2, 37:13, 37:24, 39:1, 39:15, 39:24, 40:23, 47:7, 61:15, 70:5, 70:9, 70:11, 70:12, 84:6, 103:3, 109:9, 125:21, 132:9, 133:1, 170:17, 170:18, 170:19, 170:22, 171:5, 171:24, 171:25, 172:1, 172:2</p> <p>De [1] - 1:23</p> <p>deal [1] - 52:11</p> <p>December [20] - 67:14, 67:24, 79:9, 81:14, 98:5, 98:9, 124:16, 135:14, 139:23, 141:11, 161:8, 170:5, 170:8, 170:9, 170:10, 170:24, 170:25, 171:20, 172:5, 172:7</p> <p>December's [1] - 161:7</p> <p>decide [1] - 37:16</p> <p>decided [8] - 37:25, 90:16, 92:6, 129:18, 177:17, 177:22, 179:5</p> <p>deducted [2] - 142:23</p> <p>deducting [2] - 93:24, 136:21</p> <p>deductions [1] - 60:10</p> <p>Defendants [10] - 1:10, 80:22, 88:25, 89:6, 89:19, 96:8, 99:21, 100:24, 101:5, 101:11</p> <p>DEFENDANTS [2] - 1:19, 3:12</p> <p>Defendants' [1] - 3:16</p> <p>Defense [1] - 169:11</p> <p>deliberating [2] - 183:12, 184:21</p> <p>Delio [9] - 24:18, 39:14, 47:14, 73:9, 91:8, 94:11, 123:13, 135:9</p> <p>DELIO [1] - 1:4</p> <p>deliver [1] - 94:21</p> <p>delivered [1] - 94:22</p> <p>demonstrative [2] - 117:6</p> <p>denied [1] - 18:15</p> <p>department [8] -</p>	<p>29:21, 29:22, 30:2, 30:12, 32:10, 138:8, 141:15, 153:14</p> <p>deposed [1] - 108:24</p> <p>deposit [5] - 60:6, 60:9, 93:19, 94:22, 95:14</p> <p>deposited [2] - 98:5, 98:7</p> <p>deposition [33] - 17:3, 17:6, 17:11, 17:13, 17:20, 17:22, 18:20, 18:23, 19:2, 107:12, 107:18, 107:21, 108:1, 108:3, 109:7, 109:11, 109:23, 110:5, 110:23, 110:25, 111:4, 112:21, 114:4, 114:5, 116:5, 116:9, 178:9, 178:17, 180:9, 180:19, 181:4, 181:8, 182:4</p> <p>depositions [1] - 182:14</p> <p>deposits [1] - 96:23</p> <p>describe [1] - 71:1</p> <p>designations [1] - 108:6</p> <p>desk [3] - 68:11, 68:13, 71:12</p> <p>desks [1] - 6:16</p> <p>determine [2] - 100:17, 121:4</p> <p>determines [2] - 17:23, 17:24</p> <p>developed [2] - 62:23, 115:15</p> <p>difference [7] - 33:23, 50:21, 80:23, 100:25, 151:25, 152:12, 152:14</p> <p>differences [3] - 80:25, 153:19, 153:20</p> <p>different [24] - 16:17, 20:11, 28:16, 51:4, 52:18, 52:19, 53:12, 58:7, 58:13, 60:16, 65:13, 68:18, 69:1, 80:24, 83:21, 85:13, 85:16, 85:17, 100:18, 111:7, 125:8, 127:17, 173:13</p> <p>difficulty [1] - 5:15</p> <p>digital [1] - 85:21</p> <p>direct [4] - 60:6, 94:22, 111:7, 182:9</p> <p>DIRECT [7] - 5:1,</p>	<p>22:23, 56:2, 88:22, 121:22, 129:7, 162:22</p> <p>Direct [3] - 3:5, 3:7, 3:9</p> <p>directly [2] - 122:7, 182:10</p> <p>disagree [1] - 115:6</p> <p>discovery [1] - 119:18</p> <p>discrepancies [1] - 150:10</p> <p>discrepancy [1] - 154:15</p> <p>discuss [10] - 22:11, 22:14, 55:6, 86:23, 105:16, 124:1, 127:2, 128:22, 181:18, 185:11</p> <p>discussed [1] - 125:25</p> <p>discussing [1] - 22:25</p> <p>discussion [5] - 62:13, 68:15, 105:19, 173:1, 174:3</p> <p>discussions [2] - 59:16, 62:6</p> <p>disputed [1] - 23:3</p> <p>distractions [1] - 82:7</p> <p>DISTRICT [3] - 1:1, 1:1, 1:12</p> <p>divide [2] - 99:15, 175:19</p> <p>divided [13] - 164:15, 164:20, 164:22, 166:11, 166:14, 166:22, 167:1, 167:5, 168:12, 168:16, 168:18, 175:20</p> <p>dividers [1] - 6:23</p> <p>DIVISION [1] - 1:2</p> <p>document [21] - 68:6, 68:13, 74:2, 74:4, 77:4, 77:5, 78:20, 92:20, 95:10, 117:1, 123:8, 139:7, 139:12, 142:3, 149:22, 150:6, 150:8, 153:22, 154:1, 160:1, 160:3</p> <p>documents [2] - 120:16, 138:18</p> <p>dollars [3] - 151:5, 151:6, 152:14</p> <p>done [13] - 22:5, 23:12, 53:20, 103:9, 115:21, 115:22, 133:12, 169:19, 169:20, 169:21, 182:21, 184:13,</p>
D				
<p>daily [2] - 83:12, 90:14</p> <p>DANIEL [1] - 1:19</p> <p>Daniel [1] - 1:19</p> <p>dantropp@bellsouth.net [1] - 1:21</p> <p>data [1] - 106:12</p> <p>database [1] - 8:10</p> <p>date [11] - 61:16, 61:18, 94:20, 94:21, 94:22, 144:23, 145:8, 145:18, 146:10, 158:2, 158:4</p> <p>DATE [1] - 185:23</p> <p>dated [2] - 26:1,</p>				

July 11, 2023

8

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>184:25 Doral [11] - 5:23, 5:25, 6:8, 6:12, 6:16, 13:17, 13:18, 15:14, 20:22, 91:9 down [7] - 53:6, 94:21, 107:25, 113:22, 121:9, 159:13, 178:20 download [2] - 75:22, 76:8 downloaded [1] - 75:23 drew [1] - 59:18 drive [1] - 73:3 drop [2] - 180:25 due [4] - 82:21, 91:7, 101:1, 156:7 dumb [1] - 165:23 during [108] - 14:20, 17:20, 18:23, 22:14, 28:4, 28:7, 29:7, 30:8, 30:15, 47:8, 59:18, 59:20, 63:24, 64:6, 65:20, 67:7, 67:14, 67:17, 69:22, 70:1, 70:6, 70:7, 70:19, 70:25, 72:11, 72:14, 72:18, 73:6, 78:19, 79:2, 79:7, 84:7, 96:3, 96:8, 96:15, 96:21, 96:22, 97:2, 97:14, 97:15, 97:21, 98:14, 98:17, 100:7, 101:12, 107:20, 109:4, 109:8, 110:8, 110:21, 111:12, 120:24, 124:1, 124:6, 124:8, 124:13, 124:14, 124:18, 124:25, 125:6, 126:19, 127:4, 127:18, 128:2, 128:4, 130:2, 133:8, 134:11, 134:20, 135:3, 135:5, 135:7, 135:13, 140:11, 141:3, 141:6, 141:9, 141:19, 142:6, 142:17, 142:21, 143:7, 143:14, 143:24, 145:10, 145:14, 146:13, 146:19, 148:11, 148:15, 148:19, 148:25, 154:16, 157:10, 157:19, 160:6, 160:14,</p>	<p>161:10, 163:4, 163:18, 164:4, 164:8, 166:16, 168:3, 170:17 duties [1] - 123:22 duty [1] - 84:8</p> <p style="text-align: center;">E</p> <p>e-mail [102] - 19:11, 20:2, 20:5, 20:11, 20:12, 21:7, 21:12, 21:17, 21:21, 21:23, 22:2, 22:3, 23:1, 23:8, 23:12, 23:20, 23:23, 23:25, 29:24, 30:1, 32:9, 41:12, 41:19, 41:21, 42:16, 42:23, 60:24, 61:1, 61:5, 61:7, 61:10, 61:15, 76:6, 80:24, 81:3, 81:18, 82:1, 82:2, 82:4, 82:10, 82:11, 82:12, 82:19, 83:1, 83:8, 89:10, 89:13, 89:15, 89:22, 90:7, 96:19, 101:2, 106:13, 106:14, 113:22, 114:19, 115:1, 117:13, 117:16, 117:19, 117:20, 117:24, 118:2, 118:5, 118:15, 118:18, 118:23, 118:24, 118:25, 119:1, 119:5, 119:7, 119:8, 119:11, 119:16, 119:17, 132:16, 132:19, 132:20, 132:21, 132:22, 133:4, 137:11, 138:10, 138:23, 139:14, 150:9, 150:13, 150:17, 152:10, 152:15, 152:19, 152:21, 152:25, 153:6, 153:7, 154:3, 154:5, 154:9, 154:15 e-mailed [1] - 138:1 e-mails [8] - 19:22, 42:1, 89:21, 89:25, 119:23, 137:25, 138:3 earlier.. [1] - 111:18 early [5] - 66:21, 81:14, 83:15, 131:13, 183:9 earn [4] - 78:5, 78:6,</p>	<p>97:17, 98:3 earned [20] - 29:7, 30:25, 95:20, 97:20, 97:24, 97:25, 98:2, 98:6, 98:9, 98:14, 98:16, 98:17, 98:19, 101:10, 101:13, 155:18, 159:19, 163:4, 163:7, 163:18 earning [1] - 160:9 earnings [2] - 158:10, 175:4 easy [1] - 56:14 eating [1] - 184:2 effect [2] - 141:10, 172:3 effective [5] - 140:25, 144:23, 145:7, 145:18, 146:10 efforts [3] - 29:16, 31:1, 142:25 eight [8] - 6:5, 37:18, 47:8, 47:16, 48:1, 71:6, 71:9, 165:16 either [8] - 7:7, 11:3, 64:24, 67:1, 70:22, 77:21, 79:10, 167:17 elect [1] - 176:11 elevators [1] - 181:20 ELMO [1] - 117:1 empathy [1] - 53:14 employed [4] - 106:17, 127:19, 127:24, 174:21 employee [10] - 8:20, 8:22, 33:21, 34:23, 35:12, 50:22, 60:3, 60:11, 106:18, 185:8 employees [6] - 12:25, 16:22, 25:11, 25:14, 33:25, 34:3 employer [3] - 35:20, 104:17, 185:9 employment [5] - 89:5, 101:6, 101:10, 123:2, 162:6 employments [1] - 88:25 encounter [1] - 88:6 end [20] - 27:4, 66:23, 66:25, 81:14, 84:7, 88:24, 89:5, 105:8, 125:4, 125:18, 126:5, 131:13, 134:18, 155:20, 155:24, 157:7, 161:8, 161:18, 161:19, 162:6 ended [7] - 29:11, 67:1, 78:21, 125:1,</p>	<p>125:20, 131:11, 156:15 ending [1] - 171:17 English [3] - 21:12, 22:1, 133:22 enrolled [2] - 74:24, 109:5 enrollment [150] - 28:5, 28:7, 29:8, 29:10, 30:8, 30:15, 31:15, 33:1, 47:5, 47:8, 59:20, 65:25, 66:1, 66:3, 66:15, 66:17, 66:18, 66:23, 67:5, 67:7, 67:8, 67:17, 68:9, 68:21, 69:23, 70:1, 70:6, 70:7, 70:19, 70:25, 72:12, 72:14, 72:19, 73:7, 78:15, 78:16, 78:19, 79:3, 79:7, 84:7, 93:10, 93:15, 93:18, 93:25, 94:1, 95:20, 96:3, 96:8, 96:11, 96:15, 96:22, 96:24, 97:2, 97:14, 97:15, 97:17, 97:21, 97:25, 98:15, 98:18, 98:21, 99:2, 100:7, 101:1, 101:8, 101:12, 101:13, 102:11, 102:12, 102:14, 102:23, 113:21, 118:8, 118:17, 118:19, 120:25, 124:8, 124:15, 124:19, 124:25, 125:3, 125:6, 125:18, 125:20, 134:11, 134:14, 134:18, 134:20, 134:22, 135:3, 135:7, 135:13, 135:18, 137:5, 137:23, 140:11, 141:3, 141:6, 141:9, 141:14, 141:19, 141:21, 142:6, 142:18, 142:22, 143:8, 143:14, 143:24, 145:11, 145:14, 145:20, 146:13, 146:19, 148:4, 148:8, 148:11, 148:15, 148:19, 149:1, 155:23, 156:1, 156:5, 156:10, 156:14, 156:18, 156:25, 157:3,</p>	<p>157:4, 157:7, 157:10, 157:11, 157:20, 158:7, 159:5, 159:9, 160:6, 160:15, 161:10, 161:18, 163:4, 163:19, 164:4, 164:9, 166:17, 167:15, 167:24, 168:3, 168:6, 171:9 entered [6] - 4:15, 22:19, 55:19, 88:18, 129:4, 169:10 entire [6] - 70:19, 103:1, 124:13, 157:5, 166:18 entitled [2] - 44:3, 185:20 environment [1] - 90:13 equipment [4] - 130:21, 133:19, 133:24, 134:7 ESQ [4] - 1:14, 1:15, 1:19, 1:22 Esquire [1] - 1:19 essence [1] - 136:9 essentially [2] - 139:16, 140:8 evening [2] - 181:22, 183:13 eventually [2] - 125:9, 174:24 EVIDENCE [1] - 3:15 evidence [26] - 19:23, 40:7, 54:17, 54:25, 60:20, 61:8, 68:1, 73:22, 89:9, 92:19, 94:3, 107:12, 108:2, 117:1, 117:2, 117:4, 117:5, 132:11, 158:17, 158:19, 158:21, 158:24, 169:10, 175:5, 178:18, 178:19 evidentiary [1] - 158:14 ex [2] - 90:16, 91:2 ex-coworker [1] - 91:2 exact [3] - 120:24, 161:5, 178:2 exactly [6] - 58:3, 58:4, 113:18, 120:19, 121:4, 156:8 exam [2] - 61:21, 85:24 EXAMINATION [13] - 5:1, 22:23, 33:14, 50:14, 54:5, 56:2, 88:22, 101:19,</p>
---	--	--	--	---

July 11, 2023

9

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>120:13, 121:22, 129:7, 162:22, 170:21 Examination [6] - 3:5, 3:6, 3:7, 3:8, 3:9, 3:10 examination [8] - 3:5, 3:6, 3:8, 33:13, 101:18, 162:17, 169:16, 184:16 examinations [1] - 184:13 examine [1] - 108:14 examining [1] - 81:20 example [6] - 7:25, 27:19, 29:10, 52:11, 125:3, 182:1 examples [1] - 138:21 Excel [13] - 49:12, 78:9, 79:14, 80:1, 80:8, 119:23, 127:14, 139:1, 149:13, 149:24, 155:19, 157:15, 157:18 excellent [1] - 169:5 except [2] - 43:22, 72:21 exceptions [1] - 103:2 excitement [1] - 48:5 excuse [2] - 95:5, 123:16 excused [5] - 22:16, 53:22, 123:16, 129:1, 185:15 exhausted [1] - 73:1 exhibit [16] - 41:20, 41:23, 68:2, 68:3, 69:6, 73:24, 77:7, 80:20, 81:16, 89:11, 92:22, 94:6, 150:4, 153:24, 160:21, 178:17 Exhibit [34] - 3:16, 3:17, 3:18, 3:18, 3:19, 3:19, 3:20, 19:21, 19:24, 21:13, 24:5, 24:6, 60:21, 60:22, 68:1, 68:23, 73:22, 77:6, 80:18, 81:15, 89:9, 92:19, 92:21, 94:3, 132:11, 132:12, 139:3, 139:4, 150:3, 153:23, 159:23, 159:24, 160:20 exhibits [1] - 42:1 EXHIBITS [1] - 3:15 exited [5] - 22:13, 55:8, 87:2, 128:24, 181:24</p>	<p>expect [2] - 135:21, 154:15 expected [2] - 83:25, 136:6 expecting [1] - 124:18 expenses [4] - 51:7, 51:9, 51:12, 67:14 experience [3] - 33:20, 53:18, 174:15 expertise [1] - 27:23 explain [8] - 68:17, 69:3, 75:19, 76:15, 128:11, 136:5, 137:7, 149:14 explained [5] - 9:15, 63:6, 68:18, 68:20, 124:6 explanation [2] - 68:12, 153:19 extended [1] - 156:7 extensions [1] - 156:6 external [1] - 65:12</p> <p style="text-align: center;">F</p> <p>fact [5] - 5:9, 8:15, 25:22, 51:20, 82:21 facts [4] - 54:16, 54:24, 158:21, 158:24 fair [10] - 119:1, 148:18, 156:9, 156:17, 164:3, 164:8, 174:5, 175:3, 176:6, 180:14 FairLaw [1] - 1:15 fall [1] - 53:6 far [11] - 63:22, 64:12, 65:8, 67:12, 79:9, 81:2, 83:11, 96:11, 96:23, 120:19, 142:21 fashion [1] - 169:15 fast [1] - 104:24 favor [2] - 23:6, 163:15 February [46] - 29:12, 31:18, 67:25, 79:10, 92:16, 94:24, 94:25, 95:5, 95:12, 95:15, 96:6, 114:20, 124:21, 125:8, 125:11, 126:5, 126:6, 126:11, 128:18, 136:21, 136:24, 137:2, 140:23, 141:5, 141:8, 141:17, 141:18, 142:2, 145:3, 145:19,</p>	<p>146:7, 146:22, 147:6, 156:9, 156:17, 157:2, 165:14, 167:16, 167:20, 167:22, 168:1, 168:2, 168:10, 168:14, 174:25, 175:3 federal [1] - 10:5 fee [2] - 11:5, 11:7 fellow [1] - 78:16 fever [1] - 130:3 few [5] - 48:22, 61:15, 65:22, 103:2, 154:7 figure [2] - 99:18, 100:10 file [7] - 74:25, 75:5, 75:24, 76:16, 85:9, 106:16, 120:15 filed [2] - 85:7, 108:6 fill [4] - 35:8, 35:11, 85:18, 123:8 filled [1] - 106:13 filling [1] - 85:14 final [4] - 51:7, 51:9, 183:1, 185:3 finalize [1] - 75:20 finally [2] - 61:20, 135:17 fine [1] - 88:17 finish [4] - 18:9, 75:21, 86:19, 169:12 fire [1] - 162:8 fired [4] - 35:21, 162:7, 162:10, 177:21 Firm [1] - 1:15 first [31] - 9:7, 24:14, 28:7, 56:11, 56:12, 60:5, 65:20, 76:13, 78:15, 79:6, 83:6, 94:19, 95:9, 101:23, 102:17, 103:25, 124:10, 135:13, 135:17, 138:4, 139:6, 142:22, 143:7, 158:9, 158:15, 160:3, 172:9, 176:13, 177:7 five [13] - 39:24, 57:9, 70:9, 73:14, 86:10, 106:25, 109:9, 116:21, 162:20, 162:21, 165:25, 166:4, 166:9 fixed [1] - 175:25 FL [3] - 1:16, 1:20, 1:24 flagged [1] - 75:4 flat [1] - 167:10</p>	<p>floor [6] - 15:12, 23:13, 23:17, 25:7, 41:4, 148:1 Floor [2] - 2:5, 185:24 FLORIDA [1] - 1:1 Florida [6] - 1:4, 2:6, 58:6, 84:22, 147:12, 185:24 fluid [1] - 104:2 folder [2] - 117:19, 138:19 follow [1] - 177:25 following [2] - 4:1, 153:9 follows [3] - 4:21, 55:24, 121:19 food [1] - 35:8 FOR [4] - 1:14, 1:19, 3:3, 3:12 forced [4] - 40:20, 40:22, 40:23 foregoing [1] - 185:18 form [12] - 41:9, 73:18, 73:19, 74:2, 75:22, 76:4, 76:20, 76:22, 77:2, 116:17, 183:2, 185:3 format [1] - 20:12 former [1] - 90:16 forms [1] - 35:9 forward [2] - 55:16, 92:17 forwarded [1] - 106:14 forwarding [1] - 82:1 foundation [1] - 36:22 four [5] - 165:25, 166:2, 168:11, 178:10 frames [1] - 52:19 Francisco [4] - 56:21, 56:24, 57:2, 91:11 freedom [3] - 37:4, 37:9, 38:10 Friday [23] - 16:19, 39:20, 70:8, 77:13, 77:18, 90:18, 98:6, 144:13, 144:16, 144:17, 144:19, 145:7, 145:23, 146:1, 146:3, 146:4, 146:7, 146:16, 151:1, 154:11, 166:19, 183:9 Fridays [1] - 103:4 front [4] - 107:13, 110:25, 135:2, 176:17 fulfilled [1] - 155:15 full [7] - 36:25, 37:5, 37:18, 37:19, 60:12,</p>	<p>114:17, 122:1 full-time [4] - 36:25, 37:5, 37:18, 37:19 fully [1] - 139:17 functions [1] - 123:22 funeral [1] - 51:12</p> <p style="text-align: center;">G</p> <p>Gables [2] - 1:16, 1:24 Garfield [1] - 160:19 Garza [3] - 91:4, 91:5, 91:6 gauge [1] - 85:24 general [2] - 31:9, 33:8 generally [4] - 164:3, 164:8, 165:24, 166:1 generates [1] - 90:14 gentlemen [8] - 4:16, 22:10, 53:25, 55:5, 56:7, 86:22, 128:21, 181:13 girl [1] - 57:6 girls [1] - 57:6 given [9] - 14:20, 88:10, 88:11, 90:12, 98:25, 110:25, 127:12, 136:20, 142:24 glass [5] - 6:16, 6:23, 7:4, 7:9, 7:11 goal [2] - 184:20, 184:23 Gomez [1] - 64:15 gonna [1] - 125:9 Gonzalez [8] - 57:11, 61:6, 61:7, 61:11, 63:10, 64:18, 65:9, 65:19 GONZALEZ [1] - 1:9 Google [23] - 28:8, 28:10, 28:14, 28:16, 28:20, 28:22, 29:1, 29:5, 30:4, 30:7, 30:18, 30:22, 31:4, 31:6, 31:20, 32:25, 33:5, 149:15, 149:17, 149:24, 159:17, 161:2, 162:3 Government [1] - 182:20 government's [1] - 10:5 graduated [1] - 63:4 graph [1] - 15:9 grateful [1] - 150:16 greater [2] - 159:14, 160:9 green [1] - 142:12</p>
--	--	--	---	---

July 11, 2023

10

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>Guerra [2] - 24:24, 73:8</p> <p>guess [2] - 155:17, 185:9</p> <p>guessing [1] - 155:19</p>	<p>held [1] - 4:1</p> <p>hello [2] - 82:13, 88:13</p> <p>help [10] - 27:19, 35:7, 35:8, 35:11, 104:3, 115:7, 115:10, 121:4, 124:7, 140:16</p> <p>helped [1] - 106:1</p> <p>hereby [1] - 185:18</p> <p>herself [2] - 26:21, 112:7</p> <p>hi [3] - 33:16, 56:8, 101:21</p> <p>higher [1] - 102:10</p> <p>highest [2] - 77:15, 78:3</p> <p>highlighted [1] - 20:6</p> <p>highlighting [1] - 139:7</p> <p>himself [1] - 91:16</p> <p>hire [1] - 7:12</p> <p>hired [2] - 9:14, 122:22</p> <p>hold [5] - 58:16, 110:17, 112:7, 112:15, 112:17</p> <p>home [56] - 10:13, 10:14, 10:15, 10:16, 10:19, 12:4, 13:9, 13:11, 13:15, 13:23, 14:3, 14:4, 14:7, 14:8, 14:10, 46:11, 70:15, 73:4, 81:5, 81:6, 82:22, 82:25, 83:3, 83:4, 83:10, 83:14, 83:17, 91:12, 103:17, 103:24, 104:3, 127:18, 127:23, 128:1, 128:4, 128:9, 128:11, 128:14, 128:15, 128:17, 129:10, 129:13, 129:18, 130:4, 130:6, 130:10, 130:13, 130:17, 130:20, 131:11, 131:23, 132:1, 177:17, 177:19, 177:22, 178:3</p> <p>homes [1] - 83:13</p> <p>honest [1] - 43:9</p> <p>Honor [48] - 4:6, 4:7, 18:8, 18:12, 34:10, 34:11, 36:2, 49:23, 50:13, 53:21, 54:17, 54:25, 55:14, 85:23, 86:15, 86:21, 87:4, 88:4, 88:5, 88:21, 101:16, 104:24, 105:11, 107:3,</p>	<p>107:11, 107:25, 108:12, 110:22, 112:3, 116:25, 121:10, 158:9, 162:19, 163:12, 169:7, 169:17, 172:11, 172:21, 174:7, 174:10, 178:16, 178:22, 178:24, 183:7, 183:8, 183:16, 183:21, 185:13</p> <p>Honor's [1] - 185:6</p> <p>HONORABLE [1] - 1:12</p> <p>hoping [1] - 183:20</p> <p>hour [16] - 39:17, 45:1, 62:11, 63:18, 63:20, 65:24, 66:5, 66:7, 67:6, 86:3, 99:14, 100:6, 102:2, 105:15, 179:6</p> <p>hourly [15] - 44:4, 49:6, 97:9, 97:14, 99:2, 99:3, 99:17, 100:3, 167:5, 173:2, 173:4, 173:11, 173:17, 174:3, 174:16</p> <p>hours [70] - 14:6, 16:14, 16:20, 37:17, 37:18, 38:2, 38:4, 39:17, 39:24, 40:24, 47:8, 47:16, 48:1, 52:6, 69:25, 70:9, 70:10, 70:21, 72:18, 72:19, 72:24, 97:7, 99:12, 100:7, 100:8, 100:11, 102:24, 103:3, 103:5, 109:9, 109:12, 110:7, 110:13, 110:20, 110:21, 111:5, 120:24, 121:4, 134:20, 134:24, 148:12, 148:18, 148:25, 149:2, 151:24, 163:22, 164:5, 164:9, 164:20, 165:3, 166:17, 166:20, 166:21, 168:14, 170:21, 176:6, 176:22, 176:23, 177:4, 177:5, 177:11, 177:15, 177:16, 178:10, 179:7, 183:15</p> <p>house [5] - 52:16, 52:25, 53:6, 131:2,</p>	<p>131:9</p> <p>human [2] - 50:16, 50:19</p> <p>hundred [1] - 151:2</p> <p>husband [4] - 91:11, 91:20, 91:22, 91:25</p> <p>husband's [1] - 56:20</p>	<p>incorrectly [2] - 111:1, 111:3</p> <p>increase [1] - 175:17</p> <p>indeed [2] - 57:17, 57:18</p> <p>Indeed [1] - 58:19</p> <p>independent [27] - 14:9, 20:20, 20:25, 21:5, 33:21, 34:1, 36:8, 36:17, 36:21, 37:9, 38:9, 45:24, 50:22, 60:3, 92:7, 104:6, 105:7, 105:10, 112:1, 112:8, 112:15, 115:25, 116:15, 172:19, 179:22, 180:5, 185:8</p> <p>indicates [2] - 93:3, 95:22</p> <p>individual [4] - 80:6, 92:17, 113:16, 138:25</p> <p>individually [1] - 78:17</p> <p>industry [1] - 174:7</p> <p>infected [1] - 128:2</p> <p>inform [2] - 23:11, 89:22</p> <p>information [5] - 83:2, 104:4, 106:7, 106:12, 162:13</p> <p>informed [2] - 96:18, 107:21</p> <p>informing [1] - 133:5</p> <p>initial [2] - 125:16, 126:8</p> <p>Ink [6] - 75:22, 76:2, 76:5, 76:7, 76:13, 76:21</p> <p>Innet [1] - 57:16</p> <p>input [1] - 169:12</p> <p>inside [4] - 65:7, 65:12, 90:25, 116:20</p> <p>installations [1] - 90:15</p> <p>instead [1] - 61:11</p> <p>instructed [1] - 17:6</p> <p>instruction [2] - 76:18, 88:6</p> <p>instructions [5] - 55:10, 89:21, 183:1, 185:3, 185:6</p> <p>insurance [185] - 5:12, 5:17, 5:18, 6:6, 6:8, 6:13, 6:15, 6:18, 6:21, 7:1, 7:12, 7:15, 8:15, 8:16, 8:18, 9:3, 9:10, 9:24, 10:2, 10:4, 10:7, 10:8,</p>
<p>H</p>			<p>I</p>	
<p>half [7] - 99:24, 99:25, 100:3, 100:6, 100:11, 179:6</p> <p>hallway [1] - 88:7</p> <p>hand [7] - 4:18, 24:13, 30:7, 30:11, 55:21, 121:16, 147:10</p> <p>handle [2] - 8:3, 26:15</p> <p>handled [4] - 65:10, 65:11, 85:22, 106:7</p> <p>handles [2] - 27:2, 27:8</p> <p>hang [2] - 72:11, 72:16</p> <p>Harris [1] - 135:11</p> <p>head [2] - 88:12, 176:10</p> <p>headphones [1] - 82:23</p> <p>headset [4] - 71:19, 71:21, 130:15, 134:1</p> <p>headsets [2] - 65:3, 84:11</p> <p>Health [7] - 98:4, 143:6, 143:7, 143:10, 151:10, 151:16, 151:21</p> <p>health [33] - 5:18, 9:3, 10:4, 10:8, 11:12, 51:22, 57:22, 57:23, 58:1, 58:3, 58:7, 58:8, 58:9, 58:12, 58:15, 58:18, 59:11, 59:19, 59:22, 60:13, 60:18, 61:14, 61:24, 71:4, 90:17, 112:17, 123:25, 124:11, 136:10, 136:13, 136:16, 143:14, 174:5</p> <p>hear [13] - 33:18, 46:21, 47:13, 48:14, 50:7, 63:25, 64:7, 64:22, 65:4, 71:17, 73:5, 149:14, 174:12</p> <p>heard [5] - 66:8, 133:18, 137:7, 174:12</p> <p>hearing [2] - 5:15, 79:22</p> <p>hearsay [3] - 47:17, 48:13, 48:16</p>		<p>ID [1] - 85:21</p> <p>idea [2] - 33:8, 41:5</p> <p>IDENTIFIED [1] - 3:15</p> <p>identified [7] - 19:24, 24:6, 60:22, 69:5, 92:21, 132:12, 139:4</p> <p>identify [1] - 41:20</p> <p>IDs [1] - 136:8</p> <p>Illinois [2] - 85:2, 85:6</p> <p>image [1] - 160:23</p> <p>immediately [1] - 67:4</p> <p>immigration [1] - 27:20</p> <p>impeach [4] - 108:23, 109:16, 181:25, 182:6</p> <p>impeaching [1] - 112:4</p> <p>impeachment [11] - 108:4, 108:15, 108:16, 108:17, 112:4, 178:25, 179:1, 180:11, 181:5, 181:11, 182:14</p> <p>implemented [3] - 73:13, 73:15, 76:13</p> <p>implying [1] - 176:20</p> <p>important [1] - 17:10</p> <p>improper [7] - 108:15, 112:4, 178:25, 180:11, 181:5, 181:11</p> <p>IN [1] - 3:15</p> <p>inbound [1] - 71:16</p> <p>inbox [1] - 117:18</p> <p>inboxes [1] - 120:10</p> <p>INC [1] - 1:8</p> <p>include [3] - 93:6, 93:9, 98:13</p> <p>included [7] - 32:15, 93:14, 94:16, 98:10, 98:12, 118:18, 144:8</p> <p>includes [1] - 145:25</p> <p>including [1] - 141:11</p> <p>incoming [1] - 23:17</p> <p>inconsistent [1] - 108:23</p> <p>inconveniencing [1] - 183:3</p>		

July 11, 2023

11

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

11:12, 11:23, 12:2, 12:9, 12:15, 12:16, 12:24, 13:2, 13:5, 13:8, 13:12, 13:22, 14:15, 14:21, 15:10, 15:17, 15:20, 15:22, 15:25, 16:6, 16:17, 16:18, 17:16, 17:23, 17:24, 18:3, 19:14, 19:18, 21:8, 23:9, 23:16, 24:2, 25:3, 25:10, 25:13, 25:23, 26:1, 26:15, 27:3, 27:16, 28:1, 28:17, 29:2, 29:4, 32:4, 32:23, 32:24, 33:1, 37:20, 43:15, 51:2, 51:3, 51:10, 51:11, 51:16, 51:17, 51:20, 51:21, 51:22, 51:23, 51:24, 51:25, 52:2, 54:21, 55:2, 57:22, 57:23, 57:24, 58:1, 58:4, 58:8, 58:9, 58:10, 58:12, 58:15, 58:18, 59:12, 59:14, 59:19, 59:22, 60:13, 60:18, 61:14, 61:24, 62:7, 62:10, 62:20, 62:24, 63:2, 63:22, 64:5, 64:18, 67:3, 68:6, 69:14, 70:25, 71:4, 76:22, 77:3, 77:11, 77:20, 78:7, 78:23, 79:2, 79:6, 83:22, 84:22, 84:23, 85:1, 85:5, 85:11, 85:13, 90:17, 104:6, 105:24, 105:25, 106:2, 111:25, 112:1, 112:8, 116:4, 122:14, 123:25, 124:12, 129:25, 130:8, 130:10, 130:18, 131:24, 133:19, 135:6, 136:10, 136:13, 136:16, 137:16, 139:10, 140:13, 142:6, 142:13, 142:20, 143:4, 143:13, 144:6, 144:13, 146:4, 146:19, 147:13, 154:10, 154:24, 155:1, 155:14, 160:5, 160:11, 172:10, 172:17, 173:16, 173:23, 174:6, 174:17, 174:18	Insurance [5] - 140:21, 146:25, 151:10, 151:17, 151:22 intend [1] - 182:14 interest [2] - 41:3, 169:7 internal [1] - 77:4 Internet [5] - 45:17, 45:23, 57:14, 82:23, 83:9 interpreted [1] - 107:7 interpreter [8] - 4:23, 31:25, 34:6, 50:8, 107:2, 107:8, 179:10, 179:12 Interpreter [1] - 2:2 INTERPRETER [24] - 5:14, 6:10, 12:11, 31:25, 34:6, 34:9, 34:13, 42:13, 58:10, 72:3, 72:7, 74:19, 85:3, 89:2, 90:1, 94:25, 97:11, 104:23, 107:2, 107:5, 117:22, 142:9, 164:6, 179:12 interview [14] - 57:25, 58:21, 59:2, 59:3, 59:4, 59:18, 122:16, 122:18, 122:24, 124:1, 124:6, 126:19, 127:3, 177:7 interviewed [5] - 9:9, 122:22, 123:9, 123:19, 126:24 introduce [3] - 56:6, 107:12, 108:13 introduced [1] - 89:9 invite [1] - 48:12 inviting [1] - 48:12 involvement [1] - 85:12 involving [1] - 54:20 issue [11] - 27:16, 27:20, 40:25, 58:7, 75:1, 105:12, 108:10, 151:15, 151:21, 151:23 issued [1] - 120:16 issues [3] - 75:7, 75:10, 183:1 items [2] - 84:9, 117:5 itself [2] - 35:4, 76:7	66:24, 66:25, 67:1, 67:2, 78:21, 78:22, 79:3, 81:14, 82:8, 83:8, 83:15, 83:18, 92:16, 94:23, 94:24, 95:5, 125:4, 134:19, 136:20, 137:1, 140:22, 141:2, 141:7, 141:12, 141:14, 141:22, 142:2, 144:5, 144:25, 145:1, 145:3, 145:8, 146:3, 146:4, 146:10, 147:3, 148:5, 154:23, 156:3, 156:15, 163:20, 170:10, 170:12, 170:17, 170:19, 171:14, 175:1 January's [1] - 161:17 Jennifer [2] - 21:22, 89:23 JManjarres@ AvantAssurance. com [1] - 21:23 job [27] - 7:1, 7:12, 7:15, 7:20, 9:15, 21:1, 26:15, 26:18, 27:4, 34:25, 35:7, 36:25, 37:1, 37:5, 37:18, 37:19, 47:3, 53:17, 57:13, 57:19, 57:24, 59:2, 91:16, 119:9, 122:16, 173:12 jobs [1] - 37:5 joint [1] - 185:8 Jorge [4] - 42:18, 42:19, 81:21 Jorge@ fairlawattorney. com [1] - 42:20 Jose [1] - 2:2 Judge [8] - 4:8, 47:19, 99:6, 103:12, 109:25, 115:22, 120:11, 165:4 judge [2] - 55:9, 109:16 JUDGE [1] - 1:12 July [17] - 1:5, 40:9, 40:12, 89:7, 89:16, 89:25, 90:1, 90:2, 90:8, 90:18, 90:20, 90:23, 106:22, 106:23, 106:24, 106:25, 115:4 jump [1] - 95:10 June [22] - 17:4,	18:17, 18:23, 19:1, 20:5, 20:13, 22:2, 24:1, 26:5, 26:7, 39:14, 40:4, 40:10, 41:15, 106:25, 150:22, 151:16, 151:22, 158:5 juror [1] - 4:4 jurors [3] - 87:1, 88:6, 88:13 jury [50] - 4:9, 4:10, 4:15, 18:18, 19:8, 19:9, 22:13, 22:18, 22:19, 26:23, 55:8, 55:10, 55:18, 55:19, 56:7, 68:3, 73:24, 77:7, 80:20, 81:16, 87:2, 88:4, 88:18, 89:11, 92:22, 94:6, 101:9, 117:5, 128:23, 128:24, 129:3, 129:4, 150:4, 153:24, 159:24, 160:21, 181:22, 181:23, 181:24, 182:15, 182:22, 182:25, 183:4, 183:10, 183:19, 184:21, 185:1, 185:2, 185:3 JURY [1] - 1:11	L ladies [8] - 4:16, 22:10, 53:25, 55:5, 56:7, 86:22, 128:21, 181:13 laptop [1] - 182:16 laptops [1] - 46:4 large [2] - 71:5, 150:10 largest [1] - 160:12 last [16] - 18:14, 23:1, 34:7, 41:15, 58:10, 89:25, 90:2, 90:21, 90:22, 90:23, 146:25, 154:5, 158:2, 158:4, 180:8, 181:8 late [8] - 15:5, 19:19, 21:20, 23:5, 23:10, 41:2, 89:24, 181:15 lately [1] - 90:13 latest [1] - 183:11 Law [1] - 1:19 lawsuit [3] - 57:10, 99:22, 180:10 lawyer [1] - 119:6 lawyers [3] - 42:21, 88:6, 181:19 lead [1] - 73:10 leading [10] - 99:8, 100:14, 148:20, 148:22, 149:19, 151:18, 156:19, 165:4, 184:6 leads [10] - 11:9, 11:11, 11:14, 11:16, 13:6, 23:17, 65:2, 71:16, 72:20, 148:1 learn [7] - 7:19, 52:18, 52:23, 63:8, 63:20, 63:23, 64:5 learned [2] - 53:17, 85:11 least [1] - 146:25 leave [6] - 69:10, 70:12, 105:18, 170:24, 181:21, 183:8 led [1] - 68:15 LEDESMA [1] - 4:20 Ledesma [18] - 3:4, 4:13, 5:3, 5:6, 19:21, 20:10, 22:25, 23:25, 25:1, 50:16, 58:23, 63:8, 64:16, 69:18, 73:9, 81:20, 137:7, 149:14 left [14] - 22:25, 24:13, 34:1, 34:15, 34:18,
	J Jamaica [2] - 171:21, 172:4 January [52] - 29:11,		K Katrina [4] - 24:24, 40:16, 73:8 keep [4] - 21:24, 137:22, 140:17, 159:17 keeping [1] - 4:17 Kendall [10] - 5:23, 6:1, 6:3, 6:5, 9:12, 10:21, 51:15, 81:10, 98:8, 122:21 kept [4] - 28:7, 31:20, 32:25, 66:4 keyboard [1] - 134:5 keyboards [1] - 84:11 kind [5] - 53:1, 91:5, 127:12, 131:5, 153:2 knowing [6] - 52:11, 52:12, 80:10, 83:11, 120:19, 179:2 knowledge [2] - 43:24, 62:20 known [2] - 8:7, 12:20 knows [3] - 18:5, 27:12, 52:16	

July 11, 2023

12

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>41:18, 48:3, 68:11, 68:13, 72:25, 106:22, 129:9, 147:10, 170:8</p> <p>left-hand [2] - 24:13, 147:10</p> <p>legal [3] - 44:20, 50:21, 179:23</p> <p>length [1] - 183:14</p> <p>Leon [2] - 1:23, 122:2</p> <p>less [17] - 6:14, 22:7, 31:9, 37:17, 43:16, 98:5, 116:21, 119:3, 126:21, 134:15, 136:5, 151:2, 155:20, 177:4, 177:5, 177:15, 181:1</p> <p>lesser [1] - 102:2</p> <p>letting [1] - 182:21</p> <p>license [39] - 37:1, 51:21, 51:22, 57:24, 58:1, 58:2, 58:3, 58:4, 58:7, 58:8, 59:7, 59:9, 59:12, 59:14, 59:22, 60:13, 60:18, 61:13, 61:14, 61:19, 61:24, 62:16, 62:17, 63:4, 63:7, 64:9, 84:22, 101:24, 102:16, 105:24, 105:25, 106:3, 106:9, 122:14, 147:18, 147:19, 147:20, 147:22</p> <p>licensed [6] - 44:13, 58:9, 62:7, 62:10, 147:13, 147:16</p> <p>licenses [4] - 58:14, 65:13, 84:23, 85:12</p> <p>licensing [1] - 61:9</p> <p>life [6] - 57:24, 58:1, 58:3, 58:9, 58:12, 59:13</p> <p>limine [3] - 105:12, 172:12, 172:22</p> <p>limited [1] - 177:8</p> <p>Lincoln [1] - 51:7</p> <p>Line [7] - 17:22, 110:2, 110:3, 114:8, 114:10, 179:16, 182:4</p> <p>line [4] - 11:19, 109:24, 114:7, 178:23</p> <p>link [1] - 83:6</p> <p>links [2] - 82:24, 82:25</p> <p>list [4] - 8:9, 32:12, 139:14, 139:16</p> <p>listen [2] - 65:17, 73:3</p> <p>listening [1] - 64:1</p>	<p>lists [1] - 139:14</p> <p>literally [1] - 29:24</p> <p>live [1] - 122:5</p> <p>LLC [15] - 91:24, 92:1, 92:18, 105:22, 105:24, 105:25, 106:16, 106:18, 106:19, 106:20, 106:21, 107:6, 107:8, 113:10, 113:11</p> <p>location [2] - 98:8, 110:14</p> <p>lock [3] - 165:10, 165:12</p> <p>locked [1] - 166:23</p> <p>log [5] - 10:13, 12:16, 37:19, 82:22, 83:1</p> <p>log-in [1] - 83:1</p> <p>logged [1] - 12:9</p> <p>logging [1] - 10:15</p> <p>Look [1] - 176:17</p> <p>look [19] - 24:13, 82:7, 95:8, 96:5, 100:10, 139:6, 139:21, 140:4, 140:24, 143:22, 144:4, 144:7, 144:22, 147:9, 150:11, 150:16, 153:14, 163:8, 183:2</p> <p>looked [1] - 94:12</p> <p>looking [17] - 18:20, 21:7, 57:22, 63:6, 68:22, 124:7, 139:13, 142:11, 143:5, 144:8, 145:6, 145:25, 146:3, 146:7, 157:14, 182:17, 183:13</p> <p>looks [4] - 144:16, 146:2, 178:17</p> <p>LOPEZ [3] - 1:4, 1:4, 55:23</p> <p>Lopez [20] - 3:7, 23:19, 23:22, 24:16, 24:20, 42:11, 42:16, 47:15, 55:15, 56:8, 73:9, 90:19, 92:17, 99:12, 100:17, 101:21, 104:14, 104:19, 107:17, 120:15</p> <p>Lorenzo [1] - 1:16</p> <p>lose [1] - 82:20</p> <p>losing [1] - 182:20</p> <p>lost [3] - 79:14, 165:18, 176:18</p> <p>Lou [1] - 135:12</p> <p>loud [1] - 90:10</p>	<p>louder [1] - 50:8</p> <p>lunch [5] - 86:23, 86:25, 87:3, 87:5, 179:6</p> <p>Lunes [1] - 39:19</p> <p>M</p> <p>ma'am [3] - 53:22, 55:4, 121:9</p> <p>madness [2] - 71:2, 71:3</p> <p>mail [102] - 19:11, 20:2, 20:5, 20:11, 20:12, 21:7, 21:12, 21:17, 21:21, 21:23, 22:2, 22:3, 23:1, 23:8, 23:12, 23:20, 23:23, 23:25, 29:24, 30:1, 32:9, 41:12, 41:19, 41:21, 42:16, 42:23, 60:24, 61:1, 61:5, 61:7, 61:10, 61:15, 76:6, 80:24, 81:3, 81:18, 82:1, 82:2, 82:4, 82:10, 82:11, 82:12, 82:19, 83:1, 83:8, 89:10, 89:13, 89:15, 89:22, 90:7, 96:19, 101:2, 106:13, 106:14, 113:22, 114:19, 115:1, 117:13, 117:16, 117:19, 117:20, 117:24, 118:2, 118:5, 118:15, 118:18, 118:23, 118:24, 118:25, 119:1, 119:5, 119:7, 119:8, 119:11, 119:16, 119:17, 132:16, 132:19, 132:20, 132:21, 132:22, 133:4, 137:11, 138:10, 138:23, 139:14, 150:9, 150:13, 150:17, 152:10, 152:15, 152:19, 152:21, 152:25, 153:6, 153:7, 154:3, 154:5, 154:9, 154:15</p> <p>mailed [1] - 138:1</p> <p>mails [8] - 19:22, 42:1, 89:21, 89:25, 119:23, 137:25, 138:3</p> <p>maintained [1] - 8:10</p> <p>maintenance [1] -</p>	<p>91:15</p> <p>majority [1] - 136:23</p> <p>manage [7] - 6:21, 13:5, 13:8, 15:17, 15:22, 21:2, 52:12</p> <p>managed [2] - 14:16, 16:18</p> <p>manager [14] - 5:7, 5:9, 5:20, 8:12, 8:23, 13:13, 20:15, 20:18, 20:22, 20:24, 21:1, 21:22, 24:11, 27:12</p> <p>manages [3] - 26:20, 26:22, 27:9</p> <p>managing [1] - 21:4</p> <p>mandatory [3] - 74:16, 74:19, 76:19</p> <p>Manjarres [2] - 21:22, 89:23</p> <p>March [24] - 29:12, 79:11, 92:17, 95:22, 95:25, 96:6, 106:21, 106:22, 107:6, 107:8, 125:13, 126:12, 128:18, 140:23, 142:2, 144:21, 145:4, 145:6, 145:14, 145:18, 145:25, 167:16, 167:21, 175:18</p> <p>Mariana [20] - 3:7, 23:22, 24:16, 39:9, 42:4, 42:11, 42:16, 42:23, 47:14, 55:15, 56:4, 56:8, 88:24, 90:19, 92:17, 101:17, 101:21, 113:16, 113:17</p> <p>MARIANA [2] - 1:4, 55:23</p> <p>marked [9] - 19:22, 21:14, 24:4, 89:8, 139:2, 150:2, 159:23, 160:20, 182:12</p> <p>marketplace [5] - 10:5, 77:3, 83:22, 174:5, 174:15</p> <p>married [2] - 56:18, 56:24</p> <p>Mary [1] - 135:12</p> <p>mash [1] - 182:8</p> <p>matched [2] - 31:4, 31:6</p> <p>math [6] - 110:16, 163:11, 184:2, 184:3, 184:7, 184:17</p> <p>mathematics [1] - 158:16</p>	<p>matter [5] - 23:6, 53:11, 133:9, 155:19, 185:20</p> <p>matters [2] - 34:5, 34:8</p> <p>maximum [1] - 183:23</p> <p>McCARN [2] - 2:4, 185:23</p> <p>mean [21] - 7:18, 23:11, 26:24, 62:15, 62:23, 67:10, 84:6, 97:4, 104:7, 107:17, 114:4, 121:1, 124:14, 138:7, 139:20, 141:2, 142:8, 145:2, 145:5, 151:1, 183:17</p> <p>meaning [5] - 126:10, 159:14, 161:8, 161:24, 183:11</p> <p>means [4] - 145:10, 146:13, 152:12, 156:21</p> <p>meant [1] - 185:1</p> <p>Medicaid [1] - 35:8</p> <p>Medicare [1] - 35:8</p> <p>meet [2] - 122:20, 123:10</p> <p>meeting [5] - 16:25, 68:12, 123:23, 153:12, 153:15</p> <p>member [25] - 29:15, 30:4, 30:18, 31:8, 32:15, 62:12, 65:24, 66:6, 66:7, 66:11, 67:6, 74:23, 77:18, 77:19, 79:24, 124:9, 125:2, 126:2, 126:7, 126:9, 126:10, 135:24, 140:5</p> <p>member's [1] - 32:17</p> <p>members [15] - 30:6, 32:22, 73:19, 79:21, 80:6, 80:13, 111:13, 113:23, 135:16, 139:16, 139:24, 140:12, 160:13, 160:14, 161:23</p> <p>memorized [1] - 116:7</p> <p>mentioned [11] - 13:11, 25:6, 52:2, 53:16, 54:8, 65:23, 68:22, 70:5, 79:18, 123:23, 129:9</p> <p>met [7] - 9:7, 122:25, 123:9, 123:11, 123:19, 153:16</p> <p>MIAMI [1] - 1:2</p> <p>Miami [7] - 1:4, 1:20, 2:5, 2:6, 122:7,</p>
--	--	---	--	--

July 11, 2023

13

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

185:24, 185:24 microphone [4] - 4:24, 50:8, 102:5, 129:22 middle [1] - 135:2 might [1] - 182:13 mind [2] - 169:11, 169:17 mine [4] - 46:6, 78:17, 153:5, 166:23 minus [1] - 60:10 minute [1] - 128:21 minutes [11] - 22:8, 55:6, 59:1, 73:14, 86:9, 86:11, 116:22, 154:7, 162:20, 162:21, 183:23 MISCELLANEOUS [1] - 3:22 mischaracterization [2] - 40:6, 111:3 mischaracterizing [1] - 110:23 mish [1] - 182:8 mish-mash [1] - 182:8 miss [3] - 82:20, 83:25, 89:23 missing [4] - 80:11, 80:25, 113:24, 181:9 misstatement [1] - 175:5 mistake [1] - 158:11 mistaken [4] - 114:20, 114:23, 118:12, 171:10 mistranslated [1] - 34:10 Molina [7] - 146:18, 146:19, 150:20, 151:9, 151:11, 151:16, 151:21 moment [6] - 17:15, 44:6, 69:17, 115:1, 123:22, 128:13 Monday [15] - 16:19, 39:3, 39:19, 40:5, 62:4, 62:5, 62:14, 62:18, 62:25, 63:7, 70:7, 103:4, 132:24, 151:1, 166:19 money [42] - 30:25, 37:17, 47:12, 67:17, 80:25, 93:23, 94:1, 94:22, 95:20, 96:5, 96:6, 96:14, 96:20, 98:9, 99:20, 100:23, 101:5, 125:22, 135:18, 135:21, 136:6, 136:19, 136:23, 137:4,	137:9, 137:15, 140:17, 142:20, 146:5, 151:25, 155:4, 155:7, 157:19, 157:24, 163:3, 163:7, 176:7, 176:12, 176:13, 177:16, 179:17 moneys [1] - 94:17 Monge [4] - 24:14, 64:15, 73:8 MONGE [1] - 24:14 monitor [2] - 49:19, 65:15 monitors [2] - 84:11, 108:1 month [34] - 17:3, 19:4, 19:8, 65:21, 67:25, 95:9, 126:3, 126:8, 126:9, 144:24, 145:1, 150:10, 150:15, 150:22, 150:25, 152:5, 155:6, 155:7, 155:18, 155:20, 155:22, 158:1, 158:3, 158:16, 162:1, 165:24, 166:3, 168:9, 175:15, 175:16, 175:17, 175:18, 175:23 month's [1] - 140:22 monthly [4] - 11:5, 137:8, 137:11, 159:19 months [19] - 92:16, 96:21, 106:25, 135:13, 135:17, 156:4, 157:3, 165:14, 165:25, 166:2, 166:4, 166:7, 166:9, 166:16, 167:23, 167:24, 175:20 morning [25] - 4:3, 4:16, 5:3, 5:4, 14:24, 15:15, 22:10, 55:5, 56:4, 56:5, 56:6, 56:8, 62:14, 62:18, 91:8, 127:6, 137:7, 149:14, 181:15, 181:16, 182:25, 183:3, 183:19, 184:21, 185:4 most [7] - 66:17, 70:11, 72:21, 77:12, 103:1, 160:5, 160:8 motion [3] - 105:11, 172:12, 172:22	mouse [7] - 71:15, 71:22, 72:11, 84:12, 84:14, 84:18, 134:3 move [8] - 77:8, 86:13, 91:10, 103:14, 104:24, 111:20, 112:23, 122:7 moved [1] - 5:22 MR [285] - 4:6, 4:7, 4:8, 4:13, 5:2, 5:16, 9:20, 12:13, 12:14, 18:7, 18:12, 18:16, 20:1, 21:16, 22:8, 22:24, 24:7, 32:2, 33:12, 33:15, 34:8, 34:11, 34:14, 34:17, 35:13, 35:15, 35:17, 35:19, 36:2, 36:4, 36:14, 36:16, 36:18, 36:20, 36:22, 37:3, 38:19, 39:13, 40:3, 40:6, 40:9, 40:13, 41:20, 41:21, 41:22, 41:25, 42:2, 42:15, 43:17, 43:20, 43:23, 44:2, 44:20, 44:24, 46:20, 46:22, 46:25, 47:17, 47:19, 47:22, 47:23, 48:13, 48:15, 48:18, 49:22, 50:1, 50:6, 50:9, 50:11, 50:13, 50:15, 53:21, 53:24, 54:1, 54:4, 54:6, 54:16, 54:19, 54:24, 55:3, 55:9, 55:14, 56:3, 58:12, 58:17, 60:23, 68:4, 72:4, 72:8, 72:10, 73:25, 74:21, 77:8, 77:10, 80:17, 80:21, 81:17, 83:24, 84:3, 84:5, 84:21, 85:4, 85:23, 86:2, 86:6, 86:9, 86:12, 86:15, 86:18, 86:21, 87:4, 88:4, 88:9, 88:12, 88:15, 88:21, 88:23, 89:4, 89:12, 90:2, 90:6, 92:23, 93:13, 94:7, 94:24, 95:1, 97:13, 99:6, 99:9, 99:11, 100:14, 100:16, 101:15, 101:20, 102:7, 103:7, 103:11, 103:14, 103:15, 104:24, 105:3, 105:5, 105:11, 105:14, 107:11, 107:16, 107:25, 108:5, 108:12,	108:19, 108:21, 109:2, 109:3, 109:16, 109:20, 109:22, 109:25, 110:2, 110:4, 110:22, 111:2, 111:9, 111:10, 111:23, 112:3, 112:6, 112:9, 112:14, 112:22, 112:24, 114:3, 114:8, 114:10, 114:21, 115:22, 115:23, 116:21, 116:24, 116:25, 117:3, 117:7, 118:1, 118:10, 118:13, 118:14, 119:15, 119:20, 119:25, 120:6, 120:11, 120:14, 121:8, 121:10, 121:14, 121:23, 123:16, 123:18, 129:8, 129:23, 132:13, 138:25, 139:5, 142:11, 142:15, 148:20, 148:22, 148:24, 149:19, 149:21, 150:5, 151:18, 151:20, 153:25, 154:22, 156:19, 156:23, 158:9, 158:15, 158:18, 158:21, 158:24, 159:3, 159:25, 160:18, 160:22, 162:16, 162:19, 162:23, 163:2, 163:12, 163:14, 164:7, 164:12, 164:14, 165:4, 165:7, 165:21, 166:25, 169:7, 169:17, 169:20, 169:22, 170:2, 171:3, 171:4, 172:11, 172:15, 172:21, 172:24, 173:5, 173:8, 173:18, 173:21, 174:7, 174:10, 174:14, 175:5, 175:10, 178:16, 178:20, 178:22, 178:24, 179:4, 179:14, 179:15, 179:23, 180:3, 180:11, 180:13, 181:5, 181:7, 181:11, 182:18,	183:7, 183:8, 183:16, 183:20, 183:24, 184:5, 184:9, 184:11, 184:23, 184:25, 185:5, 185:13 must [3] - 74:15, 145:18, 183:5 mute [1] - 65:4 N name [14] - 5:5, 24:14, 32:15, 35:2, 35:4, 56:8, 56:20, 79:25, 91:22, 122:1, 135:12, 143:4, 147:11, 154:10 names [3] - 24:13, 73:7, 123:14 narrative [1] - 48:15 national [5] - 102:20, 102:25, 109:4, 110:21, 111:12 nature [1] - 185:7 near [1] - 71:7 necessarily [1] - 6:25 necessary [2] - 16:24, 120:9 need [18] - 7:19, 19:14, 27:19, 38:4, 52:10, 53:13, 91:10, 99:17, 103:11, 111:20, 133:7, 160:11, 176:4, 182:24, 183:2, 184:12, 184:25, 185:2 needed [8] - 23:13, 37:15, 41:4, 75:19, 83:2, 85:21, 130:17, 176:20 needs [4] - 4:24, 42:5, 53:15, 179:10 nervous [1] - 56:9 never [23] - 11:23, 30:20, 31:3, 31:5, 31:8, 33:4, 63:15, 82:18, 92:5, 106:19, 108:20, 108:22, 116:17, 119:16, 127:20, 133:25, 153:16, 153:18, 153:21, 172:25, 173:1, 180:1 new [4] - 89:21, 125:24, 125:25, 155:23 next [14] - 4:12, 55:13, 64:4, 64:12, 107:15,
---	--	---	--	---

July 11, 2023

14

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>109:21, 121:12, 121:14, 150:11, 150:15, 157:7, 161:25, 182:23, 183:9 night [1] - 15:15 nine [1] - 167:23 NO [1] - 1:2 nobody [2] - 66:8, 110:25 non [1] - 167:24 non-open [1] - 167:24 none [2] - 15:17, 63:1 nonresponsive [2] - 18:7, 18:13 normally [3] - 60:10, 70:6, 124:20 North [2] - 2:5, 185:24 notation [1] - 107:9 note [1] - 154:13 notebooks [1] - 181:21 nothing [6] - 53:21, 73:5, 90:19, 101:15, 121:8, 184:17 notified [1] - 90:4 notifying [1] - 89:17 November [18] - 66:19, 67:14, 67:24, 74:9, 79:8, 102:14, 102:21, 102:22, 124:16, 131:13, 131:17, 135:14, 139:23, 148:8, 156:3, 163:20, 172:6, 174:23 nowhere [1] - 118:23 NTN [1] - 147:23 number [25] - 32:17, 32:18, 32:19, 41:24, 58:2, 79:19, 79:20, 80:9, 85:19, 97:20, 126:14, 137:19, 139:21, 141:10, 147:18, 147:19, 147:21, 147:22, 151:9, 151:12, 158:25, 169:1, 175:20, 176:13 numbered [1] - 41:25 numbers [18] - 58:7, 80:10, 95:17, 113:23, 140:4, 140:8, 150:17, 150:18, 151:4, 152:10, 158:10, 162:25, 163:8, 163:10, 163:15, 169:12, 170:5</p>	<p>O o'clock [1] - 14:24 oath [4] - 18:23, 19:6, 107:20, 116:8 object [4] - 18:7, 18:12, 107:11, 116:25 objecting [3] - 158:15, 158:24, 178:25 objection [53] - 34:11, 35:13, 35:17, 36:2, 36:14, 36:18, 36:22, 40:6, 43:17, 43:23, 44:20, 46:20, 46:21, 46:22, 47:17, 48:13, 48:14, 49:22, 49:23, 50:6, 50:7, 50:9, 54:16, 54:24, 99:6, 99:8, 100:14, 105:11, 110:22, 112:3, 112:9, 119:25, 148:20, 149:19, 151:18, 156:19, 158:9, 158:14, 158:15, 158:21, 165:4, 171:3, 172:11, 172:21, 173:5, 173:18, 174:7, 175:5, 178:16, 179:23, 180:11, 181:5, 181:11 objections [3] - 52:12, 182:8, 184:6 obtained [4] - 61:9, 61:17, 63:7, 108:22 occasions [2] - 65:3, 163:25 occurred [1] - 91:7 October [24] - 9:8, 9:9, 31:18, 61:17, 61:18, 61:22, 62:1, 62:3, 62:14, 62:25, 66:20, 102:16, 102:17, 102:20, 102:23, 124:16, 126:21, 131:13, 134:15, 148:5, 156:24, 157:2, 165:15, 174:23 OF [1] - 1:1 offer [4] - 59:21, 59:24, 69:12, 127:16 offered [4] - 68:20, 69:15, 77:16, 160:12 offering [2] - 53:13, 69:10 offhand [1] - 100:20 office [88] - 5:25, 6:3,</p>	<p>6:8, 6:12, 9:12, 10:12, 10:21, 11:18, 13:17, 13:18, 14:12, 15:14, 20:22, 21:18, 21:20, 21:22, 40:11, 40:15, 42:9, 42:24, 48:10, 51:15, 59:13, 61:25, 62:5, 62:14, 64:7, 64:8, 64:9, 65:7, 65:13, 66:12, 70:2, 70:3, 70:15, 71:9, 71:12, 75:7, 77:11, 77:23, 78:14, 81:10, 81:22, 81:24, 82:2, 83:19, 84:12, 85:14, 90:5, 90:25, 91:7, 104:7, 104:8, 104:11, 104:12, 114:4, 115:9, 116:4, 116:20, 119:9, 122:21, 123:11, 123:15, 125:21, 125:23, 127:4, 127:21, 129:14, 129:17, 129:20, 129:25, 130:3, 131:3, 131:9, 132:6, 133:6, 133:11, 133:24, 134:21, 148:13, 153:4, 153:8, 170:9, 174:22, 176:20 OFFICER [10] - 4:2, 4:10, 22:12, 55:7, 55:18, 87:1, 88:3, 128:23, 129:3, 181:23 officer [2] - 90:15, 90:24 offices [3] - 1:19, 5:22, 59:3 Official [1] - 185:23 official [2] - 2:4, 21:11 officially [2] - 66:19, 148:8 often [2] - 65:19, 124:10 old [1] - 57:8 once [18] - 62:6, 62:10, 62:15, 62:17, 63:7, 64:18, 67:8, 67:20, 73:14, 75:20, 75:22, 79:14, 125:10, 125:20, 126:3, 128:2, 132:4, 134:22 one [68] - 4:4, 13:23, 16:13, 16:18, 18:5, 26:1, 26:7, 27:7, 28:16, 30:7, 32:24,</p>	<p>36:10, 37:25, 38:6, 38:25, 40:4, 41:21, 51:23, 54:1, 58:14, 58:15, 63:18, 64:22, 68:9, 68:19, 68:21, 72:14, 77:21, 77:22, 78:3, 78:15, 78:21, 80:10, 83:20, 88:12, 89:17, 92:9, 92:12, 93:20, 98:4, 103:7, 106:5, 115:17, 128:6, 129:18, 135:1, 140:5, 144:1, 144:9, 144:20, 144:24, 145:1, 145:3, 146:21, 147:25, 150:10, 150:15, 152:13, 157:18, 160:4, 164:12, 176:13, 180:23, 180:24 ones [10] - 18:10, 52:7, 77:13, 77:15, 77:16, 78:17, 92:11, 92:12, 141:11, 145:13 online [1] - 58:24 open [155] - 15:14, 28:5, 28:7, 29:7, 29:10, 30:8, 30:15, 31:15, 33:1, 40:15, 47:5, 47:8, 65:25, 66:3, 66:15, 66:17, 66:18, 66:23, 67:5, 67:7, 67:8, 67:17, 68:9, 68:21, 69:22, 70:1, 70:2, 70:6, 70:7, 70:19, 70:25, 71:23, 72:12, 72:14, 72:18, 73:7, 78:15, 78:16, 78:19, 79:2, 79:7, 82:24, 84:7, 93:10, 93:15, 93:17, 93:24, 94:1, 95:20, 96:3, 96:8, 96:11, 96:15, 96:22, 96:24, 97:2, 97:14, 97:15, 97:17, 97:21, 97:25, 98:15, 98:17, 98:21, 99:2, 100:7, 101:1, 101:8, 101:12, 101:13, 102:11, 102:14, 102:23, 113:21, 118:7, 118:17, 118:19, 120:24, 124:8, 124:15, 124:25, 125:3, 125:6, 125:20, 127:4, 134:11, 134:14, 134:18, 134:20,</p>	<p>134:22, 135:3, 135:7, 135:13, 135:18, 137:4, 137:23, 138:14, 138:15, 139:12, 140:11, 141:3, 141:6, 141:9, 141:14, 141:15, 141:19, 141:21, 142:6, 142:18, 142:22, 143:7, 143:14, 143:24, 144:20, 145:10, 145:14, 145:20, 146:13, 146:19, 148:4, 148:8, 148:11, 148:15, 148:19, 148:25, 155:23, 156:1, 156:5, 156:10, 156:14, 156:17, 156:25, 157:3, 157:7, 157:10, 157:19, 158:7, 159:5, 159:9, 160:6, 160:15, 161:10, 161:18, 163:4, 163:19, 164:4, 164:9, 166:16, 167:24, 168:3, 168:6, 177:10, 183:25 opened [1] - 91:21 opening [2] - 66:1, 124:19 opponent [1] - 47:21 opportunity [3] - 37:16, 45:13, 102:1 opposed [2] - 182:15, 184:4 opposing [1] - 185:11 order [8] - 21:23, 60:13, 63:2, 75:20, 77:1, 78:6, 99:17, 176:7 Oscar [22] - 54:10, 54:13, 68:25, 77:13, 77:18, 78:1, 78:6, 80:12, 94:13, 146:25, 147:3, 147:6, 160:7, 160:8, 160:12, 160:14, 161:12, 161:21, 162:14, 171:8, 171:9, 171:16 Oscar's [1] - 79:10 otherwise [2] - 76:20, 76:21 outbox [1] - 117:18 outside [8] - 22:15,</p>
---	--	---	--	--

July 11, 2023

15

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

64:10, 91:11, 101:8, 145:20, 167:15, 181:20, 181:21 overall [1] - 54:23 overruled [26] - 35:18, 36:3, 36:15, 36:23, 40:8, 43:18, 43:25, 44:22, 49:24, 50:10, 55:1, 112:10, 118:11, 120:1, 151:19, 156:20, 158:13, 159:1, 165:5, 172:13, 172:23, 173:6, 173:19, 174:9, 175:6, 179:25 overtime [24] - 16:22, 44:4, 49:6, 99:3, 99:18, 99:21, 99:24, 100:2, 100:7, 100:11, 100:19, 100:22, 101:11, 105:16, 105:19, 158:12, 180:10, 180:16, 180:24, 180:25, 181:3, 182:2, 182:3, 182:5 owe [2] - 101:6, 114:13 owed [17] - 43:11, 99:7, 100:1, 100:2, 100:6, 100:10, 100:11, 100:19, 100:22, 100:23, 117:8, 117:11, 117:13, 117:24, 118:6, 119:2, 181:9 own [21] - 12:4, 12:18, 32:5, 45:17, 45:22, 45:23, 57:24, 63:25, 79:15, 84:9, 84:14, 84:15, 91:20, 105:24, 106:17, 115:15, 133:19, 133:24, 174:22 owned [1] - 10:10	163:25, 166:19, 167:14, 167:19, 167:20, 171:2, 181:24, 185:16 pace [1] - 183:13 Page [17] - 3:3, 3:12, 3:23, 17:21, 68:22, 77:8, 77:9, 110:2, 110:3, 111:11, 114:8, 114:10, 116:13, 178:23, 179:16, 182:4 page [5] - 68:2, 95:9, 107:14, 109:24, 114:7 Pages [1] - 1:8 paid [125] - 8:17, 8:20, 21:4, 28:2, 29:8, 29:14, 29:18, 30:3, 30:6, 30:13, 30:18, 31:4, 43:6, 44:7, 49:6, 49:11, 49:14, 49:20, 50:5, 62:6, 62:9, 66:9, 67:4, 67:18, 67:23, 69:4, 75:1, 75:4, 75:10, 76:17, 77:15, 77:17, 79:3, 79:6, 79:12, 79:13, 79:16, 79:20, 79:21, 80:3, 80:7, 85:16, 92:16, 92:18, 93:3, 93:7, 93:10, 93:23, 94:12, 94:16, 94:17, 95:2, 95:4, 95:5, 95:9, 95:12, 95:22, 95:25, 96:5, 96:6, 96:8, 96:11, 97:9, 97:14, 97:16, 99:2, 99:5, 99:14, 99:20, 99:25, 100:3, 100:25, 101:1, 101:12, 101:23, 106:21, 107:6, 107:8, 110:6, 112:25, 113:3, 113:8, 113:20, 114:14, 114:16, 114:22, 119:22, 120:4, 120:5, 124:2, 124:4, 124:25, 125:9, 125:11, 125:12, 126:1, 135:17, 135:18, 137:9, 137:19, 139:15, 140:12, 140:18, 142:5, 144:2, 144:6, 146:5, 146:23, 147:4, 149:10, 150:19, 150:22, 151:13,	154:12, 154:13, 157:19, 173:2, 173:4, 173:17, 173:22, 174:3, 174:25, 175:23 pandemic [1] - 156:7 paper [2] - 69:2, 182:15 paraphrasing [1] - 182:7 part [38] - 7:12, 7:15, 8:16, 14:5, 14:6, 20:6, 21:13, 27:1, 27:5, 34:7, 34:9, 48:11, 60:20, 61:8, 65:10, 72:24, 74:25, 75:23, 77:2, 81:15, 89:8, 89:9, 95:19, 98:12, 99:22, 105:16, 117:14, 139:2, 139:3, 142:12, 150:2, 156:4, 156:10, 156:24, 157:3, 157:4, 182:11, 183:9 part-time [1] - 14:5 partially [3] - 175:7, 175:9, 175:11 particular [6] - 54:12, 54:21, 61:10, 62:24, 76:9, 123:22 parties [3] - 86:24, 181:19, 183:4 parts [3] - 175:9, 175:12 party [4] - 47:19, 47:21, 108:3 pass [1] - 61:20 past [1] - 182:7 patience [3] - 52:11, 52:13, 181:14 patient [2] - 44:19, 63:9 Pause [36] - 20:8, 21:15, 22:21, 25:16, 38:18, 39:12, 40:2, 53:19, 55:17, 80:16, 83:23, 84:20, 93:12, 102:6, 103:8, 103:13, 105:4, 108:11, 109:1, 110:1, 111:19, 111:22, 112:19, 114:2, 114:9, 115:20, 116:23, 154:21, 160:17, 162:18, 163:1, 164:13, 165:19, 166:24, 178:15, 178:21	pause [1] - 181:12 pay [33] - 10:24, 10:25, 11:2, 11:5, 11:7, 11:14, 43:12, 43:13, 59:17, 59:21, 59:24, 60:2, 60:5, 60:6, 60:17, 65:23, 77:1, 82:4, 93:21, 93:22, 93:24, 95:19, 102:9, 124:9, 125:10, 143:10, 146:15, 146:18, 147:7, 153:20, 174:17, 174:18, 175:8 paying [10] - 16:22, 31:12, 33:7, 68:19, 124:20, 125:8, 136:21, 137:13, 137:15, 176:2 payment [15] - 66:2, 66:6, 67:6, 67:9, 67:11, 85:15, 94:19, 124:11, 124:22, 125:12, 125:24, 125:25, 151:22, 152:4, 155:10 payments [9] - 81:2, 94:11, 113:24, 120:3, 152:5, 153:13, 154:11, 154:14 pending [3] - 18:8, 18:13, 118:7 people [27] - 27:7, 27:9, 35:6, 41:4, 43:9, 43:11, 43:13, 44:19, 46:23, 48:16, 51:12, 52:5, 65:17, 70:3, 109:6, 123:11, 123:14, 123:23, 123:25, 129:19, 130:2, 136:9, 136:12, 136:15, 139:23, 176:15 per [34] - 16:14, 30:1, 55:2, 60:1, 62:11, 66:5, 66:6, 66:7, 66:10, 66:11, 67:6, 67:13, 77:19, 89:21, 99:14, 100:19, 102:10, 124:6, 125:2, 126:9, 139:21, 146:17, 150:19, 151:13, 154:11, 155:6, 155:18, 158:3, 166:20, 166:21, 168:14 perfectly [1] - 130:14	perform [2] - 76:11, 92:3 performance [1] - 81:1 period [120] - 28:5, 28:7, 29:8, 29:10, 30:8, 30:15, 31:15, 33:1, 38:12, 59:20, 66:2, 66:17, 66:18, 68:21, 69:23, 70:1, 70:6, 70:19, 73:7, 73:16, 96:22, 98:18, 101:8, 102:25, 105:8, 109:5, 109:8, 110:8, 110:21, 111:12, 113:21, 118:8, 120:25, 124:8, 124:13, 124:14, 124:15, 124:19, 125:1, 125:3, 125:6, 125:15, 125:18, 128:16, 134:12, 134:14, 134:18, 134:20, 134:22, 135:3, 135:8, 135:14, 135:18, 137:5, 137:23, 140:11, 140:25, 141:3, 141:6, 141:9, 141:14, 141:19, 142:6, 142:18, 142:22, 143:8, 143:15, 143:23, 143:24, 145:11, 145:15, 145:21, 146:13, 146:19, 148:5, 148:8, 148:11, 148:16, 148:19, 149:1, 155:23, 156:1, 156:5, 156:7, 156:10, 156:15, 156:18, 156:25, 157:3, 157:4, 157:7, 157:10, 157:11, 157:20, 158:7, 159:5, 159:9, 159:12, 160:6, 160:15, 161:6, 161:10, 161:18, 163:4, 163:19, 164:4, 164:9, 167:15, 168:4, 168:6, 170:6, 170:15, 171:5, 171:10, 171:11, 171:13, 171:17, 173:14, 175:24 periods [2] - 49:1, 170:24
P				
P.A [2] - 104:14, 104:19 p.m [31] - 1:6, 15:15, 15:18, 16:10, 16:19, 70:2, 70:5, 82:8, 87:2, 87:5, 88:2, 88:18, 105:18, 121:17, 127:6, 128:24, 129:2, 129:4, 134:23, 134:24, 148:14,				

July 11, 2023

16

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>permission [2] - 128:3, 128:5</p> <p>person [10] - 12:18, 31:8, 31:23, 40:23, 139:22, 147:25, 153:12, 153:16, 177:23</p> <p>personal [2] - 119:7, 132:21</p> <p>personally [5] - 45:18, 70:7, 73:13, 79:15, 93:4</p> <p>personnel [1] - 159:13</p> <p>perspective [1] - 159:14</p> <p>phone [35] - 11:18, 11:21, 11:23, 32:17, 32:18, 32:19, 52:7, 52:8, 53:9, 58:20, 64:2, 64:23, 65:2, 65:15, 65:17, 71:5, 71:10, 71:17, 72:20, 72:24, 73:10, 73:11, 75:18, 76:1, 80:9, 82:22, 127:15, 127:16, 164:1, 164:17, 165:10, 176:18, 176:21, 184:2</p> <p>phones [2] - 71:12, 176:16</p> <p>physical [1] - 71:12</p> <p>pick [4] - 70:12, 71:13, 131:8, 132:5</p> <p>picked [1] - 183:10</p> <p>picture [8] - 80:15, 160:25, 161:1, 161:3, 161:5, 161:7, 161:14, 161:16</p> <p>pictures [2] - 120:8, 120:9</p> <p>place [9] - 45:11, 120:20, 152:21, 152:25, 153:3, 170:25, 173:4, 173:13, 176:11</p> <p>places [1] - 54:15</p> <p>Plaintiff [4] - 4:21, 55:24, 103:9, 121:19</p> <p>plaintiff [1] - 121:14</p> <p>Plaintiff's [1] - 183:14</p> <p>Plaintiffs [17] - 1:6, 20:19, 21:4, 34:1, 34:14, 36:11, 38:13, 42:21, 43:22, 44:4, 45:11, 46:4, 46:18, 46:23, 47:14, 48:1, 49:1</p> <p>plaintiffs [1] - 55:14</p> <p>PLAINTIFFS [2] -</p>	<p>1:14, 3:3</p> <p>Plaintiffs' [8] - 3:17, 3:18, 3:20, 42:1, 60:22, 92:21, 108:8, 132:12</p> <p>plan [7] - 9:5, 53:14, 68:8, 68:17, 69:8, 152:4, 160:5</p> <p>plans [4] - 53:12, 66:22, 127:17, 143:14</p> <p>play [2] - 71:19</p> <p>plus [9] - 62:11, 65:24, 66:6, 67:6, 98:1, 98:20, 118:22, 166:9, 183:15</p> <p>point [21] - 13:23, 26:19, 36:5, 43:12, 47:25, 57:23, 61:12, 62:21, 64:10, 71:8, 75:6, 76:19, 76:24, 77:2, 85:23, 85:25, 116:2, 116:13, 130:25, 131:1, 147:14</p> <p>pointed [1] - 145:24</p> <p>police [3] - 90:14, 90:24, 91:9</p> <p>policies [65] - 13:19, 13:20, 26:16, 26:21, 27:6, 27:7, 29:18, 30:13, 31:6, 31:16, 32:12, 38:13, 45:13, 47:3, 51:17, 54:10, 54:22, 54:23, 64:5, 65:20, 66:21, 67:3, 67:15, 69:14, 78:13, 79:2, 79:6, 79:12, 79:13, 80:12, 83:21, 89:22, 124:25, 131:24, 135:14, 135:19, 135:22, 137:16, 137:19, 139:17, 140:6, 143:1, 143:2, 143:7, 143:24, 144:6, 144:18, 145:7, 146:10, 146:23, 147:15, 147:17, 148:2, 149:18, 149:23, 155:14, 159:17, 160:11, 161:12, 161:21, 164:2, 171:7, 171:9, 171:16</p> <p>policy [33] - 8:1, 26:25, 27:3, 27:17, 27:19, 28:8, 28:13, 28:19, 30:8, 32:25, 51:11, 67:18, 78:7,</p>	<p>79:24, 102:10, 124:12, 125:6, 125:7, 125:11, 125:12, 126:6, 126:10, 126:12, 140:25, 141:3, 141:6, 141:9, 141:13, 141:19, 143:22, 143:23, 144:4</p> <p>Pollock [2] - 3:7, 3:8</p> <p>POLLOCK [69] - 1:14, 4:6, 4:13, 41:22, 55:9, 55:14, 56:3, 58:12, 58:17, 60:23, 68:4, 72:4, 72:8, 72:10, 74:21, 77:8, 77:10, 80:17, 80:21, 81:17, 83:24, 84:3, 84:5, 84:21, 85:4, 85:23, 86:2, 86:6, 86:9, 86:12, 86:15, 86:18, 86:21, 88:4, 88:9, 88:12, 88:15, 88:21, 88:23, 89:4, 89:12, 90:2, 90:6, 92:23, 93:13, 94:7, 94:24, 95:1, 97:13, 99:11, 100:16, 101:15, 105:11, 107:11, 107:25, 108:5, 108:12, 110:22, 111:2, 111:9, 112:3, 112:9, 116:25, 118:10, 119:25, 120:14, 121:8, 121:10, 132:13</p> <p>Ponce [1] - 1:23</p> <p>popped [1] - 88:12</p> <p>position [4] - 35:4, 57:21, 58:20, 72:23</p> <p>possibilities [1] - 160:9</p> <p>possible [5] - 16:7, 16:8, 32:19, 141:5, 145:13</p> <p>possibly [1] - 53:5</p> <p>posting [1] - 57:19</p> <p>potential [3] - 11:11, 11:18, 65:2</p> <p>practice [1] - 26:9</p> <p>pre [2] - 61:9, 61:13</p> <p>pre-license [1] - 61:13</p> <p>pre-licensing [1] - 61:9</p> <p>preferred [1] - 131:23</p> <p>Present [1] - 2:2</p> <p>presenting [1] - 132:10</p>	<p>president [1] - 26:13</p> <p>pretty [2] - 48:5, 71:5</p> <p>previous [2] - 94:4, 173:4</p> <p>previously [8] - 24:4, 25:6, 133:18, 134:10, 139:2, 150:2, 156:14, 160:20</p> <p>prices [1] - 68:18</p> <p>print [3] - 42:25, 61:12, 182:13</p> <p>problem [4] - 12:13, 40:25, 97:6, 182:11</p> <p>procedure [1] - 76:12</p> <p>proceed [3] - 4:4, 22:22, 169:15</p> <p>proceedings [39] - 4:1, 20:8, 21:15, 22:21, 25:16, 38:18, 39:12, 40:2, 53:19, 55:17, 80:16, 83:23, 84:20, 93:12, 102:6, 103:8, 103:13, 105:4, 108:11, 109:1, 110:1, 111:19, 111:22, 112:19, 114:2, 114:9, 115:20, 116:23, 154:21, 160:17, 162:18, 163:1, 164:13, 165:19, 166:24, 178:15, 178:21, 185:16, 185:19</p> <p>Proceedings..... [1] - 3:24</p> <p>process [8] - 26:20, 27:4, 27:6, 27:7, 27:19, 63:8, 75:14, 75:17</p> <p>processed [2] - 76:21, 106:1</p> <p>processing [6] - 26:15, 26:20, 26:22, 27:10, 27:16, 27:24</p> <p>produce [2] - 43:13, 152:2</p> <p>produced [1] - 119:14</p> <p>produces [1] - 119:13</p> <p>producing [1] - 25:3</p> <p>products [2] - 63:22, 115:18</p> <p>professionals [2] - 44:11, 44:13</p> <p>program [1] - 63:13</p> <p>promise [2] - 66:4, 105:20</p> <p>promised [2] - 65:23,</p>	<p>66:11</p> <p>proof [1] - 136:12</p> <p>proper [1] - 108:17</p> <p>properly [1] - 107:7</p> <p>proposed [1] - 125:22</p> <p>protect [1] - 73:20</p> <p>protection [2] - 77:4, 77:5</p> <p>provide [3] - 69:21, 85:19, 90:16</p> <p>provided [6] - 11:9, 11:21, 12:7, 28:10, 106:12, 134:7</p> <p>providing [3] - 17:7, 17:8, 90:18</p> <p>published [12] - 68:3, 73:24, 77:7, 80:20, 81:16, 89:11, 92:22, 94:6, 150:4, 153:24, 159:24, 160:21</p> <p>pure [1] - 173:25</p> <p>purpose [4] - 23:8, 40:21, 108:4, 133:4</p> <p>purse [2] - 164:17, 166:23</p> <p>put [13] - 16:4, 26:25, 39:4, 40:19, 65:3, 76:25, 105:25, 106:2, 130:12, 141:23, 157:11, 158:11, 184:7</p> <p>putting [1] - 27:1</p>
				Q
				<p>qualified [1] - 136:8</p> <p>quality [3] - 136:10, 136:13, 136:16</p> <p>quantity [1] - 181:1</p> <p>QUESTION [2] - 18:2, 110:13</p> <p>question's [1] - 110:2</p> <p>questions [18] - 33:12, 37:21, 45:1, 45:6, 48:22, 56:13, 73:17, 107:18, 119:19, 162:16, 178:8, 178:11, 178:12, 180:21, 182:7, 183:1, 183:6, 184:18</p> <p>quick [8] - 41:12, 44:15, 54:1, 54:2, 54:4, 86:13, 88:5</p> <p>quickly [3] - 169:13, 169:22, 185:5</p> <p>Quintero [13] - 26:11, 27:12, 27:15, 57:11, 61:11, 63:10, 63:16, 65:8, 65:9, 65:19, 123:13, 123:19,</p>

July 11, 2023

17

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>127:11 QUINTERO [1] - 1:9 Quintero's [2] - 27:4, 147:21 quite [1] - 169:9 quote [2] - 7:25, 83:21</p>	<p>92:7, 92:15, 93:17, 113:8, 113:13, 113:24, 114:13, 115:4, 115:5, 117:13, 120:2, 124:11, 124:16, 124:18, 125:7, 125:12, 126:11, 126:14, 127:8, 130:15, 135:21, 136:18, 136:19, 136:23, 137:8, 140:20, 142:20, 160:12, 162:14 received [55] - 23:19, 23:22, 30:19, 30:21, 31:10, 58:20, 60:8, 63:5, 66:2, 66:6, 67:24, 76:18, 78:15, 78:17, 81:1, 84:22, 92:11, 92:14, 93:2, 93:25, 96:10, 96:23, 97:2, 98:13, 98:20, 113:2, 113:5, 113:15, 113:22, 116:17, 118:7, 126:6, 135:24, 136:2, 137:1, 137:2, 137:4, 137:14, 137:23, 138:12, 138:22, 141:24, 142:2, 142:16, 144:16, 149:4, 151:13, 152:1, 155:11, 157:10, 157:12, 157:16, 158:6, 159:5, 159:8 receiving [6] - 43:21, 66:10, 79:8, 79:10, 136:5, 152:5 recess [10] - 22:11, 22:17, 55:5, 55:11, 55:12, 86:23, 87:5, 128:22, 128:25, 129:2 recognize [13] - 60:24, 60:25, 81:18, 81:21, 89:10, 89:13, 92:20, 92:24, 138:18, 150:6, 154:1, 157:15, 160:23 recollection [1] - 18:20 record [13] - 18:14, 28:13, 28:19, 41:23, 78:8, 78:9, 107:3, 127:14, 149:17, 149:22, 161:2, 161:12, 174:11 recorded [4] - 30:7,</p>	<p>30:22, 30:23, 31:6 records [2] - 120:23, 121:1 RECROSS [1] - 54:5 Recross [1] - 3:6 red [2] - 152:10, 152:11 redacted [1] - 92:20 redirect [4] - 50:12, 54:1, 111:9, 120:12 Redirect [2] - 3:6, 3:8 REDIRECT [2] - 50:14, 120:13 refer [3] - 8:4, 77:6, 82:11 referrals [1] - 45:13 referred [1] - 82:14 referring [5] - 8:4, 29:20, 121:2, 139:24, 147:22 reflect [1] - 137:18 refresh [1] - 18:20 regarding [7] - 21:20, 54:22, 65:10, 81:1, 89:21, 118:19, 127:15 regardless [1] - 67:12 register [3] - 126:2, 149:12, 157:5 registered [13] - 29:15, 49:13, 113:23, 124:9, 135:16, 136:7, 139:17, 139:23, 147:17, 147:19, 147:20, 149:11 registration [9] - 63:9, 102:21, 102:25, 106:14, 109:5, 111:12, 125:15, 141:15 rehab [1] - 133:1 rehash [1] - 184:12 Reinier [42] - 8:25, 13:20, 14:1, 28:10, 28:22, 31:12, 32:6, 43:8, 43:12, 45:10, 45:21, 46:11, 47:13, 49:15, 102:8, 105:17, 119:2, 119:8, 119:10, 119:22, 122:11, 122:19, 122:20, 124:6, 125:22, 128:6, 130:20, 133:3, 135:1, 138:5, 147:20, 149:15, 149:25, 152:15, 153:10, 153:17, 154:3, 160:4, 162:7,</p>	<p>176:17, 177:7, 181:3 REINIER [1] - 1:8 related [1] - 130:25 relation [1] - 64:16 relative [1] - 104:15 release [2] - 54:7, 54:20 released [1] - 51:23 relevance [7] - 35:13, 35:17, 36:2, 172:11, 172:21, 173:5, 173:18 relevant [1] - 174:8 reliable [1] - 177:24 remained [1] - 67:2 remaining [1] - 111:8 remember [43] - 16:25, 17:4, 17:8, 17:11, 18:22, 32:18, 32:21, 57:15, 57:16, 61:16, 61:18, 62:3, 74:7, 74:12, 79:9, 79:22, 88:25, 89:6, 94:14, 94:15, 107:17, 107:19, 107:20, 107:23, 109:13, 110:18, 110:19, 114:18, 116:6, 116:8, 123:12, 123:14, 143:21, 156:13, 161:5, 175:2, 175:14, 178:8, 180:8, 180:20, 182:3 remembered [3] - 74:10, 108:24, 115:1 remind [2] - 176:4, 178:7 remove [1] - 178:19 repeat [3] - 18:25, 33:8, 179:13 repeated [1] - 32:1 repetitive [1] - 185:7 rephrase [1] - 152:23 report [1] - 103:17 REPORTED [1] - 2:4 REPORTER [5] - 9:18, 74:17, 84:2, 102:5, 104:21 Reporter [2] - 2:4, 185:23 Reporter's [1] - 3:24 reporting [1] - 120:16 represent [6] - 93:25, 96:2, 139:1, 150:18, 151:4, 151:5 represents [2] - 94:10, 151:7 request [6] - 22:5, 23:6, 38:24, 127:23,</p>	<p>128:1, 153:5 requested [2] - 21:19, 38:24 requesting [1] - 23:3 requests [1] - 21:20 require [1] - 54:13 required [7] - 22:3, 22:4, 73:19, 76:22, 81:9, 89:19, 148:12 requirement [1] - 76:25 requirements [2] - 54:21, 77:3 requires [3] - 44:18, 52:3, 52:8 residual [1] - 152:5 resigned [3] - 104:9, 104:10, 119:9 resolve [1] - 75:9 resources [2] - 50:16, 50:19 respond [4] - 73:17, 81:3, 88:16, 152:19 response [7] - 18:14, 18:17, 108:22, 128:9, 130:23, 152:18, 152:21 responsibility [1] - 106:9 responsible [2] - 133:9, 177:24 rest [4] - 64:11, 93:23, 106:8, 136:7 restart [2] - 60:14, 60:15 resting [1] - 183:12 restrictions [2] - 54:20, 54:22 restroom [1] - 123:17 restructure [1] - 185:12 resume [1] - 86:18 retirement [1] - 9:5 return [1] - 181:14 returned [1] - 182:25 review [2] - 153:5, 154:14 reviewed [1] - 94:4 ring [3] - 11:18, 71:10, 71:17 rise [10] - 4:2, 4:10, 22:12, 55:7, 55:18, 87:1, 88:3, 128:23, 129:3, 181:23 risk [2] - 133:13, 133:14 role [2] - 65:8, 123:20 room [2] - 135:2, 181:22 rows [1] - 140:2</p>
<p>R</p> <p>Radius [8] - 8:7, 12:19, 12:21, 63:11, 76:8, 76:16, 83:7, 83:9 Rafaela [11] - 3:9, 24:22, 39:3, 47:15, 51:4, 73:8, 94:11, 121:14, 122:2, 142:1 RAFAELA [2] - 1:4, 121:18 RafaelaValiente@Gmail.com [1] - 132:21 raise [3] - 4:18, 55:21, 121:16 raises [1] - 58:6 rate [3] - 99:17, 100:3, 167:5 rates [1] - 97:16 rather [1] - 27:22 ray [1] - 132:24 Ray [2] - 133:2, 150:14 re [2] - 108:19, 112:12 re-ask [2] - 108:19, 112:12 read [17] - 21:12, 30:2, 90:7, 90:10, 108:5, 109:17, 111:1, 111:2, 111:6, 111:7, 111:8, 112:21, 132:22, 150:13, 154:9, 178:22, 179:3 reading [3] - 90:11, 111:14, 179:13 ready [5] - 4:4, 4:6, 4:7, 51:13, 150:1 real [4] - 41:12, 54:2, 54:4, 88:5 realized [1] - 104:1 really [8] - 34:5, 34:8, 42:25, 45:19, 67:1, 82:4, 97:25 reason [5] - 17:10, 33:10, 74:10, 119:5, 144:18 receive [45] - 29:11, 29:24, 30:11, 32:9, 33:9, 33:10, 52:22, 63:3, 67:5, 67:13, 67:17, 68:7, 68:8, 68:10, 76:4, 84:23,</p>				

July 11, 2023

18

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

RPR [2] - 2:4, 185:23 rude [1] - 88:15 rule [2] - 158:17, 158:19 rules [2] - 47:24 run [4] - 86:12, 86:16, 133:13, 169:13 résumés [1] - 35:11	177:8, 177:10, 177:25 scheduled [3] - 19:15, 89:16, 183:8 schedules [12] - 17:16, 24:2, 25:13, 25:22, 39:19, 39:24, 40:19, 40:21, 41:8, 69:19, 69:21, 167:18 school [4] - 52:18, 53:4, 57:23, 70:13 scratch [1] - 154:20 screen [11] - 21:7, 23:1, 132:10, 138:13, 138:16, 144:20, 157:14, 160:23, 163:8, 165:10 scroll [1] - 182:16 se [1] - 30:1 seated [11] - 4:3, 4:17, 4:23, 22:20, 55:20, 56:1, 64:10, 64:24, 88:19, 121:21, 129:5 second [3] - 71:11, 103:7, 164:12 seconds [2] - 103:11, 105:1 section [5] - 26:20, 26:22, 27:8, 65:11, 169:8 security [1] - 85:19 SECURITY [10] - 4:2, 4:10, 22:12, 55:7, 55:18, 87:1, 88:3, 128:23, 129:3, 181:23 see [57] - 6:23, 7:9, 7:11, 17:21, 23:1, 24:13, 25:25, 29:4, 31:3, 31:5, 38:20, 38:22, 42:3, 42:6, 51:16, 53:3, 65:8, 68:5, 75:6, 75:7, 86:24, 92:20, 94:8, 94:17, 94:18, 94:19, 95:5, 95:14, 95:15, 95:16, 95:23, 95:24, 104:1, 107:14, 108:9, 119:16, 121:7, 125:22, 132:22, 138:13, 138:16, 138:18, 140:2, 140:4, 141:18, 144:15, 145:7, 150:11, 151:7, 151:16, 151:21, 160:3, 173:12, 175:7, 182:24, 185:11,	185:12 seeing [3] - 94:14, 119:10, 144:19 seek [1] - 108:23 seeking [4] - 99:20, 108:13, 108:15 seem [2] - 143:23, 185:7 selects [1] - 16:13 self [2] - 106:17, 174:21 self-employed [2] - 106:17, 174:21 sell [29] - 5:17, 10:4, 10:8, 11:12, 11:23, 58:8, 58:9, 62:20, 69:14, 77:12, 77:23, 78:6, 78:7, 80:12, 84:23, 85:5, 85:11, 85:13, 130:8, 130:10, 135:15, 141:9, 141:13, 147:13, 147:15, 154:24, 160:11, 160:14, 164:2 selling [42] - 31:16, 47:2, 51:10, 51:16, 51:25, 62:24, 63:22, 65:20, 66:21, 67:3, 70:25, 102:18, 102:19, 102:22, 115:18, 124:11, 125:7, 129:25, 130:18, 131:24, 135:19, 135:21, 137:16, 140:12, 140:21, 142:5, 142:20, 142:21, 143:10, 144:2, 144:6, 146:15, 146:16, 146:18, 146:23, 159:17, 160:6, 160:8, 172:17, 173:12, 173:16, 173:22 sells [1] - 27:3 send [18] - 25:25, 29:17, 30:5, 61:3, 61:5, 61:7, 61:10, 75:18, 75:25, 82:2, 82:19, 89:15, 89:25, 92:10, 92:12, 119:23, 154:3 sends [1] - 83:1 senior [1] - 5:9 sense [3] - 45:16, 46:1, 176:14 sent [29] - 23:25, 25:22, 29:19, 42:4, 42:12, 42:17, 61:1,	61:2, 61:13, 80:24, 82:10, 82:11, 82:24, 90:8, 96:19, 101:1, 114:19, 115:2, 117:18, 117:24, 119:1, 119:7, 147:3, 150:9, 150:13, 152:15, 153:5, 153:7 separate [5] - 143:17, 143:20, 145:5, 152:20, 152:24 separated [1] - 6:16 separately [2] - 59:15, 140:20 September [7] - 61:4, 109:23, 110:5, 110:6, 132:24, 132:25, 133:11 Service [2] - 91:24, 92:18 service [2] - 45:17, 45:23 services [2] - 90:17, 92:3 Services [3] - 92:1, 92:4, 120:17 set [2] - 19:22, 134:25 seven [2] - 71:6, 133:1 several [3] - 125:21, 133:19, 149:3 shadowed [1] - 63:8 share [2] - 78:20, 149:25 shared [10] - 28:22, 29:1, 29:5, 32:4, 32:6, 78:10, 78:12, 78:18, 149:15, 162:3 sheet [30] - 28:8, 28:10, 28:14, 28:20, 28:22, 29:1, 30:4, 30:7, 30:18, 30:22, 31:4, 31:6, 31:21, 32:25, 33:5, 68:11, 69:2, 78:9, 79:14, 80:1, 80:8, 80:15, 127:14, 140:17, 149:15, 149:17, 155:20, 158:12, 159:17, 162:3 sheets [2] - 49:12, 139:1 Sheets [3] - 29:5, 149:24, 161:2 Shield [6] - 85:2, 85:6, 142:14, 142:17, 142:21, 150:21 shift [1] - 18:11 shifts [11] - 14:16, 14:17, 14:18, 14:19, 14:21, 15:10, 16:13,	21:24, 39:17, 70:3 shoot [1] - 55:9 short [2] - 52:7, 123:15 shorter [1] - 59:12 show [26] - 24:4, 32:22, 35:16, 35:23, 38:6, 39:24, 41:12, 42:24, 60:20, 68:1, 73:22, 78:8, 80:18, 81:15, 84:6, 84:8, 89:8, 92:19, 94:3, 103:16, 103:24, 117:5, 118:4, 136:12, 150:2, 160:20 showed [8] - 10:4, 25:18, 63:10, 76:11, 118:3, 127:13, 137:15, 163:6 showing [9] - 19:21, 20:11, 21:13, 30:12, 89:18, 140:17, 150:1, 153:22, 159:22 shown [2] - 69:19, 133:10 shrink [1] - 183:16 shut [1] - 117:1 sic [4] - 4:14, 5:6, 54:1, 164:5 sic [3] - 33:16, 57:16, 164:17 sick [3] - 83:4, 128:2, 129:19 side [1] - 24:13 sign [5] - 9:21, 73:20, 123:2, 123:6, 159:15 signatures [2] - 85:20, 85:21 signed [9] - 65:24, 74:23, 75:15, 76:4, 76:15, 77:18, 79:21, 80:6, 111:13 significance [1] - 152:11 signing [1] - 38:12 similar [2] - 10:2, 149:17 similarly [1] - 156:24 simply [3] - 41:1, 116:4, 116:19 sit [2] - 64:4 site [1] - 83:21 sitting [3] - 64:12, 121:7, 184:16 situation [2] - 23:16, 130:25 six [2] - 39:17, 39:24 six-hour [1] - 39:17
--	--	--	---	---

July 11, 2023

19

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

skill [7] - 44:18, 45:8, 52:9, 52:13, 52:15, 52:20 skills [4] - 52:3, 52:10, 62:23, 63:20 slower [1] - 9:19 small [2] - 64:8, 127:15 smiled [1] - 88:16 smoke [1] - 72:22 social [1] - 85:19 soft [1] - 71:10 software [14] - 10:22, 10:25, 12:2, 12:5, 12:7, 12:10, 12:16, 12:19, 63:11, 63:17, 63:20, 76:5, 83:6, 130:12 sold [60] - 26:25, 28:8, 28:13, 28:17, 28:19, 30:8, 30:18, 31:6, 32:13, 32:22, 32:25, 45:13, 49:8, 51:12, 54:14, 64:5, 67:16, 67:18, 67:24, 78:8, 78:13, 79:2, 79:7, 79:13, 80:4, 85:1, 124:25, 125:6, 125:11, 126:6, 126:10, 135:25, 136:2, 136:10, 137:20, 139:18, 140:6, 141:3, 141:6, 141:11, 141:19, 142:17, 142:25, 143:7, 143:14, 143:23, 144:16, 144:18, 145:10, 145:14, 146:13, 147:17, 149:18, 149:23, 155:1, 155:14, 161:21, 161:25, 171:7 soliciting [1] - 48:15 someone [2] - 68:12, 76:11 sometimes [5] - 10:13, 44:25, 45:3, 70:17, 184:17 somewhat [1] - 184:18 somewhere [1] - 42:17 son [1] - 70:13 soon [4] - 67:17, 72:16, 75:6, 75:8 sorry [42] - 5:14, 6:4, 6:10, 9:18, 12:11, 17:16, 31:4, 34:6, 34:10, 42:13, 53:25,	58:11, 72:3, 74:17, 84:2, 85:3, 86:6, 89:2, 97:11, 102:17, 103:12, 104:21, 109:25, 110:2, 111:20, 114:10, 121:1, 123:3, 126:19, 137:25, 142:9, 142:11, 148:21, 158:18, 158:23, 160:19, 164:6, 164:24, 165:3, 166:2, 166:11, 167:3 sort [2] - 52:10, 182:6 Source [1] - 35:3 SOUTHERN [1] - 1:1 space [4] - 6:3, 6:5, 6:8, 6:12 spaces [1] - 6:15 Spanish [4] - 21:11, 74:5, 90:7, 90:11 speakers [1] - 71:20 speaking [5] - 45:18, 164:4, 164:8, 165:24, 166:1 special [10] - 44:18, 45:8, 52:3, 52:9, 52:10, 52:13, 52:15, 52:20, 52:23, 63:19 specific [4] - 7:21, 7:23, 54:23, 123:21 specify [1] - 118:5 speculation [6] - 43:17, 43:23, 46:20, 46:22, 49:22, 49:23 speed [1] - 184:11 spend [2] - 84:18, 170:5 spent [1] - 33:25 spot [2] - 9:14, 122:22 spreadsheet [12] - 28:16, 31:22, 32:3, 32:5, 32:6, 78:10, 78:12, 78:18, 78:23, 94:4, 94:10, 161:2 spreadsheets [3] - 149:13, 157:15, 157:18 staff [1] - 115:8 staffing [2] - 34:21, 35:1 staggered [1] - 15:11 stamps [1] - 35:8 stand [3] - 83:20, 147:10, 176:17 stands [3] - 24:14, 24:16, 142:13 stared [1] - 115:24 start [23] - 14:24, 15:1,	15:20, 15:23, 16:7, 17:25, 59:12, 60:15, 66:18, 66:21, 67:3, 77:9, 79:1, 102:15, 104:13, 104:18, 106:20, 124:20, 125:8, 126:20, 134:14, 148:8, 155:23 started [45] - 8:15, 8:16, 9:21, 12:1, 16:9, 36:9, 41:16, 44:7, 62:24, 63:13, 67:8, 74:7, 79:8, 79:10, 93:15, 101:23, 102:18, 102:19, 102:20, 102:22, 103:25, 105:6, 106:21, 107:6, 107:7, 110:6, 111:24, 112:16, 116:14, 123:3, 124:10, 134:22, 136:21, 152:8, 152:9, 167:18, 172:9, 172:25, 174:24, 175:15, 177:7, 177:9 starting [5] - 102:2, 102:14, 124:20, 157:7, 175:23 State [1] - 58:6 state [5] - 5:5, 85:11, 122:1, 147:10, 147:11 statement [35] - 29:17, 29:19, 30:6, 30:12, 30:19, 31:5, 32:12, 32:15, 32:23, 32:24, 75:4, 75:12, 80:2, 80:3, 117:3, 120:3, 120:4, 140:20, 142:16, 143:5, 144:2, 144:7, 144:21, 145:6, 145:25, 146:4, 146:8, 146:16, 146:17, 147:3, 147:6, 151:11, 151:13, 152:1, 154:12 Statement [1] - 74:1 statements [39] - 32:9, 33:4, 74:7, 74:13, 74:23, 119:24, 120:7, 137:8, 137:12, 137:14, 137:18, 137:22, 138:1, 138:12, 138:21, 139:1,	141:24, 143:17, 143:20, 144:5, 144:15, 144:19, 145:5, 145:24, 146:1, 146:21, 149:3, 149:6, 149:9, 149:10, 150:19, 155:13, 157:12, 157:16, 158:6, 159:4, 159:8, 163:9, 169:10 STATES [2] - 1:1, 1:12 states [3] - 85:13, 85:16, 85:17 States [1] - 185:23 stay [13] - 70:15, 70:17, 125:23, 129:13, 129:18, 130:6, 131:23, 132:1, 141:15, 177:17, 177:19, 177:22, 178:3 stayed [1] - 130:4 Ste [2] - 1:16, 1:23 step [2] - 22:15, 121:9 STEPHANIE [2] - 2:4, 185:23 Stephanie_McCarn @flsd.uscourts. gov [1] - 2:7 still [26] - 12:15, 13:5, 13:22, 14:9, 14:10, 28:1, 31:20, 31:22, 32:6, 45:6, 50:25, 63:24, 64:6, 64:9, 98:8, 108:9, 126:1, 130:3, 131:16, 141:18, 152:4, 159:16, 163:25, 164:1, 184:20 stipulation [1] - 169:11 stood [1] - 135:1 stopped [5] - 41:13, 41:14, 102:13, 106:22, 152:7 streets [1] - 174:21 stricken [1] - 18:14 structure [1] - 69:15 study [4] - 59:11, 59:14, 60:18, 101:24 studying [8] - 58:2, 59:7, 59:21, 59:25, 60:5, 63:24, 64:6, 93:7 stuff [1] - 184:12 subscription [1] - 11:2 subtract [2] - 99:14, 170:21	suggested [1] - 80:5 suggestions [1] - 65:4 suing [3] - 180:9, 181:3, 181:4 summarized [1] - 95:8 summarizing [1] - 182:7 summary [1] - 161:1 Sunday [1] - 172:2 supervise [3] - 64:19, 64:21, 115:13 supervised [1] - 20:18 support [1] - 65:10 suppose [2] - 53:2, 98:12 supposed [9] - 31:10, 33:9, 66:14, 69:25, 77:17, 90:15, 95:19, 114:12, 128:6 supposedly [3] - 91:6, 125:9, 153:13 Suprani [21] - 56:21, 91:11, 91:24, 91:25, 92:4, 92:18, 105:22, 105:24, 105:25, 106:3, 106:16, 106:18, 106:19, 106:20, 106:21, 107:6, 107:8, 113:1, 113:10, 113:11, 120:17 surgery [4] - 42:5, 89:16, 90:4, 133:1 sustained [14] - 36:19, 46:24, 47:18, 48:17, 54:18, 99:10, 100:15, 105:13, 108:18, 148:23, 149:20, 180:12, 181:6, 181:12 sustaining [1] - 182:8 swear [2] - 4:22, 55:25 swearing [1] - 108:24 switch [1] - 8:25 switched [2] - 8:22, 31:22 sworn [1] - 18:22 symptoms [1] - 130:3 system [17] - 7:17, 7:18, 7:19, 8:3, 8:4, 8:7, 27:1, 45:11, 45:18, 49:10, 50:4, 75:8, 75:22, 76:14, 76:20, 128:4 systems [3] - 7:21, 7:24, 127:13
				T
				table [1] - 15:9

July 11, 2023

20

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

<p>tagged [1] - 75:1</p> <p>Tamayo [1] - 42:18</p> <p>tax [1] - 120:15</p> <p>taxes [3] - 60:10, 106:18, 120:15</p> <p>teach [1] - 8:3</p> <p>technique [1] - 115:16</p> <p>teeth [1] - 89:17</p> <p>temporarily [3] - 22:16, 129:1, 185:15</p> <p>ten [5] - 6:5, 55:6, 57:9, 128:21, 143:3</p> <p>ten-minute [1] - 128:21</p> <p>terms [1] - 11:7</p> <p>testified [5] - 4:21, 34:12, 55:24, 121:19, 134:10</p> <p>testify [1] - 66:8</p> <p>testifying [3] - 48:16, 99:6, 133:21</p> <p>testimony [12] - 16:3, 17:7, 17:17, 17:18, 22:14, 108:13, 108:23, 110:23, 111:4, 182:1, 182:9, 183:14</p> <p>Texas [6] - 85:2, 85:6, 142:14, 147:12, 147:13, 147:15</p> <p>text [1] - 21:17</p> <p>THE [209] - 1:12, 1:14, 1:19, 3:3, 3:12, 4:3, 4:9, 4:12, 4:14, 4:16, 4:22, 4:23, 5:14, 6:10, 9:18, 12:11, 18:9, 18:10, 18:15, 22:6, 22:9, 22:14, 22:18, 22:20, 22:22, 31:25, 33:13, 34:6, 34:9, 34:13, 34:16, 35:14, 35:18, 36:3, 36:15, 36:19, 36:23, 36:24, 40:8, 40:11, 42:13, 43:18, 43:19, 43:25, 44:1, 44:22, 44:23, 46:21, 46:24, 47:18, 47:21, 48:14, 48:17, 49:24, 49:25, 50:7, 50:10, 50:12, 53:20, 53:22, 53:25, 54:3, 54:18, 55:1, 55:2, 55:4, 55:11, 55:13, 55:16, 55:20, 55:25, 56:1, 58:10, 58:13, 72:3, 72:7, 72:9, 74:17, 74:19, 84:2, 84:4, 85:3, 86:1, 86:4, 86:7, 86:10, 86:14, 86:17,</p>	<p>86:20, 86:22, 87:3, 88:8, 88:11, 88:14, 88:17, 88:19, 89:2, 90:1, 90:3, 94:25, 97:11, 97:12, 99:8, 99:10, 100:15, 101:18, 102:5, 103:9, 104:21, 104:23, 105:2, 105:13, 107:2, 107:4, 107:5, 107:10, 107:13, 108:3, 108:7, 108:17, 108:20, 108:22, 109:18, 109:21, 109:24, 110:24, 111:6, 111:20, 112:10, 112:12, 112:20, 112:23, 114:7, 114:18, 115:21, 117:4, 117:22, 117:23, 118:11, 118:12, 119:18, 120:1, 120:2, 120:12, 121:9, 121:12, 121:15, 121:20, 121:21, 128:20, 128:25, 129:5, 129:22, 142:9, 142:13, 148:21, 148:23, 149:20, 151:19, 156:20, 156:21, 158:13, 158:17, 158:19, 158:23, 159:1, 159:2, 162:17, 162:21, 164:6, 165:5, 165:6, 165:20, 169:15, 169:19, 169:21, 172:13, 172:14, 172:23, 173:6, 173:7, 173:19, 173:20, 174:9, 174:12, 175:6, 175:7, 178:19, 179:2, 179:10, 179:12, 179:25, 180:1, 180:12, 181:6, 181:12, 181:25, 182:19, 183:10, 183:17, 183:23, 184:1, 184:7, 184:10, 184:15, 184:24, 185:2, 185:11, 185:14</p> <p>theirs [1] - 38:15</p> <p>themselves [2] - 63:22, 76:23</p>	<p>then.. [1] - 39:11</p> <p>therefore [1] - 80:9</p> <p>Thirteenth [2] - 2:5, 185:24</p> <p>thousand [3] - 117:12, 152:14, 171:7</p> <p>threat [2] - 48:20, 90:15</p> <p>threats [2] - 91:3, 91:5</p> <p>three [22] - 14:6, 38:1, 43:4, 77:20, 77:21, 77:22, 86:4, 86:7, 98:16, 128:3, 130:7, 140:22, 144:15, 145:5, 171:24, 171:25, 172:5, 179:7, 183:15</p> <p>three-day [1] - 172:5</p> <p>throughout [2] - 157:5, 175:20</p> <p>Thursday [7] - 182:20, 183:11, 183:19, 184:21, 184:22, 185:3</p> <p>tinted [1] - 7:6</p> <p>tired [1] - 169:23</p> <p>title [1] - 141:23</p> <p>today [17] - 17:1, 17:18, 19:6, 86:4, 86:7, 109:8, 116:11, 117:8, 117:10, 118:2, 121:7, 169:18, 176:18, 179:6, 179:20, 181:16, 184:15</p> <p>together [4] - 39:4, 40:19, 95:17, 104:16</p> <p>Tomayo [2] - 81:21</p> <p>tomorrow [10] - 181:15, 182:14, 182:21, 182:24, 183:3, 183:13, 183:18, 183:21, 184:25, 185:10</p> <p>took [13] - 19:2, 19:6, 39:14, 40:5, 40:16, 80:15, 116:5, 116:9, 161:1, 161:3, 161:5, 161:14, 178:8</p> <p>top [7] - 42:11, 42:16, 74:1, 82:1, 142:1, 142:11, 177:23</p> <p>tops [1] - 103:6</p> <p>total [12] - 32:22, 85:15, 85:16, 96:7, 98:20, 100:21, 114:5, 155:21, 163:3, 163:10, 175:3, 175:19</p> <p>totals [1] - 80:19</p>	<p>TOUSSAINT [1] - 1:15</p> <p>toussaint@fairlawattorney.com [1] - 1:18</p> <p>towards [1] - 94:1</p> <p>track [3] - 28:7, 31:20, 140:17</p> <p>trade [1] - 52:23</p> <p>train [4] - 7:15, 7:25, 10:2, 63:16</p> <p>trained [3] - 9:24, 50:16, 127:10</p> <p>training [10] - 52:23, 53:1, 53:8, 63:3, 63:5, 102:18, 115:15, 127:8, 127:12, 127:15</p> <p>transaction [1] - 27:5</p> <p>transcript [1] - 108:1</p> <p>transcription [1] - 185:19</p> <p>transferred [1] - 164:1</p> <p>translate [1] - 179:10</p> <p>translated [1] - 107:5</p> <p>translation [4] - 18:9, 21:11, 22:1, 32:1</p> <p>transparent [2] - 7:4, 7:7</p> <p>transportation [2] - 131:2, 131:5</p> <p>treated [6] - 34:1, 34:3, 34:13, 34:15, 44:11, 44:13</p> <p>TRIAL [1] - 1:11</p> <p>trial [4] - 68:5, 119:18, 182:19, 183:19</p> <p>tried [2] - 77:11, 77:23</p> <p>trip [1] - 172:5</p> <p>Tripp [1] - 1:19</p> <p>Tropp [21] - 3:5, 3:6, 3:8, 3:10, 40:9, 52:5, 81:20, 101:22, 102:5, 103:10, 108:7, 109:19, 111:8, 111:21, 112:20, 115:21, 117:4, 117:23, 118:16, 119:19, 182:17</p> <p>TROPP [115] - 1:19, 4:8, 33:15, 34:8, 34:14, 34:17, 35:15, 35:19, 36:4, 36:16, 36:20, 37:3, 38:19, 39:13, 40:3, 40:13, 41:21, 41:25, 42:2, 42:15, 43:20, 44:2, 44:24, 46:25, 47:19, 47:22, 47:23, 48:18, 50:1, 50:11, 53:24,</p>	<p>54:1, 54:4, 54:6, 54:19, 55:3, 73:25, 99:6, 99:9, 100:14, 101:20, 102:7, 103:7, 103:11, 103:14, 103:15, 104:24, 105:3, 105:5, 105:14, 107:16, 108:19, 108:21, 109:2, 109:3, 109:16, 109:20, 109:22, 109:25, 110:2, 110:4, 111:10, 111:23, 112:6, 112:14, 112:22, 112:24, 114:3, 114:8, 114:10, 114:21, 115:22, 115:23, 116:21, 116:24, 117:3, 117:7, 118:1, 118:13, 118:14, 119:15, 119:20, 120:6, 120:11, 148:20, 148:22, 149:19, 151:18, 156:19, 158:9, 158:15, 158:18, 158:21, 158:24, 165:4, 169:17, 169:20, 169:22, 170:2, 171:4, 172:15, 172:24, 173:8, 173:21, 174:14, 175:10, 178:22, 179:4, 179:14, 179:15, 180:3, 180:13, 181:7, 182:18, 183:7</p> <p>true [2] - 77:1, 170:8</p> <p>trusted [1] - 106:11</p> <p>truth [11] - 17:11, 17:13, 18:23, 18:24, 19:1, 19:6, 56:14, 107:22, 108:25, 116:9, 178:11</p> <p>truthful [2] - 114:23, 180:22</p> <p>try [9] - 11:11, 75:9, 78:6, 86:12, 86:19, 176:4, 178:7, 178:14, 182:17</p> <p>trying [5] - 78:5, 94:8, 107:11, 139:22, 184:5</p> <p>Tuesday [2] - 40:17, 82:8</p> <p>turn [4] - 71:23, 116:24, 125:10,</p>
---	--	--	--	--

July 11, 2023

21

Delio Batista, et al., v. Avant Assurance, Inc. et al., 22-cv-22671-CMA

128:15 TV [5] - 177:17, 177:20, 177:22, 178:4, 179:18 two [32] - 14:5, 37:5, 45:1, 57:5, 57:6, 60:19, 67:20, 68:2, 70:19, 80:11, 92:14, 92:15, 95:17, 98:2, 123:14, 123:23, 132:9, 135:13, 135:17, 143:17, 143:19, 145:23, 146:1, 146:21, 164:22, 166:9, 166:10, 166:12, 167:6, 172:1, 179:5 two-page [1] - 68:2 TX [1] - 147:10 type [5] - 38:10, 47:3, 51:11, 51:25, 58:10 types [5] - 7:23, 52:18, 52:19, 58:13, 68:20	99:17, 102:10, 102:13, 103:16, 103:24, 111:9, 111:11, 111:13, 116:21, 119:15, 122:6, 131:8, 131:11, 132:5, 133:10, 139:12, 139:19, 140:8, 141:11, 141:21, 146:2, 155:20, 158:2, 159:15, 163:10, 168:2, 170:10, 170:12, 176:17, 178:14, 184:2, 184:8, 184:11, 184:13 upload [1] - 76:8 users [1] - 82:10 uses [2] - 45:19, 63:17 usual [1] - 88:5	W W-2 [5] - 8:20, 8:22, 12:25, 16:22, 34:23 W-9 [1] - 123:8 wage [1] - 44:4 wages [2] - 34:18, 101:10 wait [4] - 67:18, 73:16, 113:15, 183:4 waiting [4] - 4:17, 72:17, 112:21, 182:16 walk [3] - 162:24, 179:6, 184:3 wants [1] - 34:6 warehouse [6] - 170:9, 170:11, 170:25, 171:1, 171:6, 171:15 wasted [1] - 184:15 watch [5] - 177:17, 177:20, 177:22, 178:3, 179:18 ways [1] - 176:19 website [2] - 57:15, 83:20 websites [1] - 83:2 Wednesday [1] - 132:25 week [45] - 14:20, 16:15, 16:20, 39:25, 60:1, 60:5, 62:3, 62:15, 63:4, 67:13, 68:9, 70:5, 70:9, 70:10, 97:2, 97:7, 98:25, 99:12, 100:7, 100:10, 100:19, 102:24, 103:3, 103:5, 109:9, 109:12, 110:7, 110:17, 110:20, 148:19, 148:25, 150:24, 150:25, 151:2, 151:3, 153:9, 163:22, 164:5, 166:20, 166:21, 168:14, 182:23, 183:9 weekend [1] - 172:4 weekends [1] - 39:22 weekly [6] - 25:22, 26:9, 60:18, 93:21, 93:22, 93:24 weeks [23] - 60:17, 60:19, 63:24, 67:21, 93:6, 93:9, 96:24, 96:25, 98:23, 128:3, 130:7, 163:19, 163:21, 164:16,	165:1, 165:24, 166:3, 166:9, 166:10, 166:12, 167:12, 168:9, 168:10 what'd [1] - 73:3 whatever's [2] - 100:1, 100:2 WhatsApp [1] - 23:11 wherein [2] - 36:25, 40:25 white [1] - 59:18 whole [7] - 48:25, 66:16, 155:1, 159:12, 166:21, 175:20 wife [1] - 43:8 window [1] - 170:16 wisdom [1] - 89:17 witness [20] - 4:12, 4:18, 4:21, 22:6, 48:19, 48:20, 53:20, 55:13, 55:24, 90:11, 101:15, 104:25, 109:17, 119:19, 121:13, 121:19, 163:13, 169:21, 182:20, 184:10 Witness [3] - 22:16, 129:1, 185:15 WITNESS [33] - 4:22, 18:10, 34:16, 35:14, 36:24, 40:11, 43:19, 44:1, 44:23, 49:25, 55:2, 55:25, 58:13, 72:9, 84:4, 90:3, 97:12, 112:12, 114:18, 117:23, 118:12, 120:2, 121:20, 142:13, 156:21, 159:2, 165:6, 165:20, 172:14, 173:7, 173:20, 175:7, 180:1 WITNESSES [3] - 3:2, 3:3, 3:12 witnesses [3] - 86:4, 86:7, 184:2 wood [1] - 52:19 word [2] - 23:2, 136:14 words [2] - 170:13, 178:2 worker [3] - 8:17, 8:22, 14:5 worksheets [1] - 149:24 workstations [1] - 71:7 worried [1] - 168:6	worth [3] - 140:22, 152:14, 178:10 wrap [1] - 116:21 written [5] - 9:21, 69:21, 123:2, 123:3, 123:6 wrote [9] - 20:5, 20:12, 22:2, 22:4, 82:20, 150:14, 152:25, 154:10, 154:13
U U.S [2] - 56:22, 56:25 Uber [4] - 91:19, 131:7, 131:8, 132:5 ultimately [1] - 61:14 uncomfort [1] - 90:12 under [12] - 18:22, 20:22, 42:1, 77:18, 92:18, 107:20, 116:8, 140:14, 147:20, 152:4, 185:9 understood [5] - 44:6, 77:4, 96:12, 115:25, 139:24 unemployed [1] - 170:14 United [1] - 185:23 UNITED [2] - 1:1, 1:12 unless [2] - 74:25, 117:5 unnecessary [2] - 184:18, 184:19 untruthful [2] - 114:24, 114:25 unusable [2] - 131:11, 131:20 unusual [1] - 124:22 up [57] - 4:14, 35:16, 35:23, 38:6, 38:13, 42:24, 48:22, 65:24, 67:2, 70:12, 71:10, 71:13, 72:11, 72:16, 77:18, 79:21, 80:6, 80:19, 84:6, 84:8, 89:18, 90:18, 95:17,	V VALIENTE [2] - 1:5, 121:18 Valiente [25] - 3:9, 24:22, 47:15, 51:16, 73:9, 121:14, 121:24, 122:1, 122:2, 129:9, 132:10, 140:15, 142:1, 150:1, 159:22, 160:19, 162:20, 162:24, 163:3, 163:15, 164:15, 167:1, 169:9, 169:14, 170:3 vary [1] - 175:25 Vasquez [2] - 64:14, 73:8 Vega [1] - 2:2 Venezuela [1] - 56:17 verdict [2] - 184:22, 185:1 verified [1] - 136:8 verify [1] - 50:3 verifying [1] - 65:13 version [1] - 74:4 versus [4] - 58:8, 79:13, 80:3, 185:8 vice [1] - 26:13 view [1] - 26:19 violence [1] - 48:19 virus [1] - 13:24 volume [1] - 71:5 vs [1] - 1:7	W W-2 [5] - 8:20, 8:22, 12:25, 16:22, 34:23 W-9 [1] - 123:8 wage [1] - 44:4 wages [2] - 34:18, 101:10 wait [4] - 67:18, 73:16, 113:15, 183:4 waiting [4] - 4:17, 72:17, 112:21, 182:16 walk [3] - 162:24, 179:6, 184:3 wants [1] - 34:6 warehouse [6] - 170:9, 170:11, 170:25, 171:1, 171:6, 171:15 wasted [1] - 184:15 watch [5] - 177:17, 177:20, 177:22, 178:3, 179:18 ways [1] - 176:19 website [2] - 57:15, 83:20 websites [1] - 83:2 Wednesday [1] - 132:25 week [45] - 14:20, 16:15, 16:20, 39:25, 60:1, 60:5, 62:3, 62:15, 63:4, 67:13, 68:9, 70:5, 70:9, 70:10, 97:2, 97:7, 98:25, 99:12, 100:7, 100:10, 100:19, 102:24, 103:3, 103:5, 109:9, 109:12, 110:7, 110:17, 110:20, 148:19, 148:25, 150:24, 150:25, 151:2, 151:3, 153:9, 163:22, 164:5, 166:20, 166:21, 168:14, 182:23, 183:9 weekend [1] - 172:4 weekends [1] - 39:22 weekly [6] - 25:22, 26:9, 60:18, 93:21, 93:22, 93:24 weeks [23] - 60:17, 60:19, 63:24, 67:21, 93:6, 93:9, 96:24, 96:25, 98:23, 128:3, 130:7, 163:19, 163:21, 164:16,	165:1, 165:24, 166:3, 166:9, 166:10, 166:12, 167:12, 168:9, 168:10 what'd [1] - 73:3 whatever's [2] - 100:1, 100:2 WhatsApp [1] - 23:11 wherein [2] - 36:25, 40:25 white [1] - 59:18 whole [7] - 48:25, 66:16, 155:1, 159:12, 166:21, 175:20 wife [1] - 43:8 window [1] - 170:16 wisdom [1] - 89:17 witness [20] - 4:12, 4:18, 4:21, 22:6, 48:19, 48:20, 53:20, 55:13, 55:24, 90:11, 101:15, 104:25, 109:17, 119:19, 121:13, 121:19, 163:13, 169:21, 182:20, 184:10 Witness [3] - 22:16, 129:1, 185:15 WITNESS [33] - 4:22, 18:10, 34:16, 35:14, 36:24, 40:11, 43:19, 44:1, 44:23, 49:25, 55:2, 55:25, 58:13, 72:9, 84:4, 90:3, 97:12, 112:12, 114:18, 117:23, 118:12, 120:2, 121:20, 142:13, 156:21, 159:2, 165:6, 165:20, 172:14, 173:7, 173:20, 175:7, 180:1 WITNESSES [3] - 3:2, 3:3, 3:12 witnesses [3] - 86:4, 86:7, 184:2 wood [1] - 52:19 word [2] - 23:2, 136:14 words [2] - 170:13, 178:2 worker [3] - 8:17, 8:22, 14:5 worksheets [1] - 149:24 workstations [1] - 71:7 worried [1] - 168:6	Y year [14] - 41:15, 66:23, 89:25, 90:2, 92:11, 92:14, 122:12, 155:1, 155:24, 157:5, 166:18, 166:21, 175:20 years [1] - 43:4 yellow [1] - 157:15 yesterday [3] - 56:11, 80:19, 154:20 yourself [14] - 8:15, 25:1, 36:21, 38:15, 44:7, 56:6, 63:19, 73:2, 102:8, 104:5, 105:10, 111:25, 134:25, 184:3 yourselves [1] - 36:17
U U.S [2] - 56:22, 56:25 Uber [4] - 91:19, 131:7, 131:8, 132:5 ultimately [1] - 61:14 uncomfort [1] - 90:12 under [12] - 18:22, 20:22, 42:1, 77:18, 92:18, 107:20, 116:8, 140:14, 147:20, 152:4, 185:9 understood [5] - 44:6, 77:4, 96:12, 115:25, 139:24 unemployed [1] - 170:14 United [1] - 185:23 UNITED [2] - 1:1, 1:12 unless [2] - 74:25, 117:5 unnecessary [2] - 184:18, 184:19 untruthful [2] - 114:24, 114:25 unusable [2] - 131:11, 131:20 unusual [1] - 124:22 up [57] - 4:14, 35:16, 35:23, 38:6, 38:13, 42:24, 48:22, 65:24, 67:2, 70:12, 71:10, 71:13, 72:11, 72:16, 77:18, 79:21, 80:6, 80:19, 84:6, 84:8, 89:18, 90:18, 95:17,	V VALIENTE [2] - 1:5, 121:18 Valiente [25] - 3:9, 24:22, 47:15, 51:16, 73:9, 121:14, 121:24, 122:1, 122:2, 129:9, 132:10, 140:15, 142:1, 150:1, 159:22, 160:19, 162:20, 162:24, 163:3, 163:15, 164:15, 167:1, 169:9, 169:14, 170:3 vary [1] - 175:25 Vasquez [2] - 64:14, 73:8 Vega [1] - 2:2 Venezuela [1] - 56:17 verdict [2] - 184:22, 185:1 verified [1] - 136:8 verify [1] - 50:3 verifying [1] - 65:13 version [1] - 74:4 versus [4] - 58:8, 79:13, 80:3, 185:8 vice [1] - 26:13 view [1] - 26:19 violence [1] - 48:19 virus [1] - 13:24 volume [1] - 71:5 vs [1] - 1:7	W W-2 [5] - 8:20, 8:22, 12:25, 16:22, 34:23 W-9 [1] - 123:8 wage [1] - 44:4 wages [2] - 34:18, 101:10 wait [4] - 67:18, 73:16, 113:15, 183:4 waiting [4] - 4:17, 72:17, 112:21, 182:16 walk [3] - 162:24, 179:6, 184:3 wants [1] - 34:6 warehouse [6] - 170:9, 170:11, 170:25, 171:1, 171:6, 171:15 wasted [1] - 184:15 watch [5] - 177:17, 177:20, 177:22, 178:3, 179:18 ways [1] - 176:19 website [2] - 57:15, 83:20 websites [1] - 83:2 Wednesday [1] - 132:25 week [45] - 14:20, 16:15, 16:20, 39:25, 60:1, 60:5, 62:3, 62:15, 63:4, 67:13, 68:9, 70:5, 70:9, 70:10, 97:2, 97:7, 98:25, 99:12, 100:7, 100:10, 100:19, 102:24, 103:3, 103:5, 109:9, 109:12, 110:7, 110:17, 110:20, 148:19, 148:25, 150:24, 150:25, 151:2, 151:3, 153:9, 163:22, 164:5, 166:20, 166:21, 168:14, 182:23, 183:9 weekend [1] - 172:4 weekends [1] - 39:22 weekly [6] - 25:22, 26:9, 60:18, 93:21, 93:22, 93:24 weeks [23] - 60:17, 60:19, 63:24, 67:21, 93:6, 93:9, 96:24, 96:25, 98:23, 128:3, 130:7, 163:19, 163:21, 164:16,	165:1, 165:24, 166:3, 166:9, 166:10, 166:12, 167:12, 168:9, 168:10 what'd [1] - 73:3 whatever's [2] - 100:1, 100:2 WhatsApp [1] - 23:11 wherein [2] - 36:25, 40:25 white [1] - 59:18 whole [7] - 48:25, 66:16, 155:1, 159:12, 166:21, 175:20 wife [1] - 43:8 window [1] - 170:16 wisdom [1] - 89:17 witness [20] - 4:12, 4:18, 4:21, 22:6, 48:19, 48:20, 53:20, 55:13, 55:24, 90:11, 101:15, 104:25, 109:17, 119:19, 121:13, 121:19, 163:13, 169:21, 182:20, 184:10 Witness [3] - 22:16, 129:1, 185:15 WITNESS [33] - 4:22, 18:10, 34:16, 35:14, 36:24, 40:11, 43:19, 44:1, 44:23, 49:25, 55:2, 55:25, 58:13, 72:9, 84:4, 90:3, 97:12, 112:12, 114:18, 117:23, 118:12, 120:2, 121:20, 142:13, 156:21, 159:2, 165:6, 165:20, 172:14, 173:7, 173:20, 175:7, 180:1 WITNESSES [3] - 3:2, 3:3, 3:12 witnesses [3] - 86:4, 86:7, 184:2 wood [1] - 52:19 word [2] - 23:2, 136:14 words [2] - 170:13, 178:2 worker [3] - 8:17, 8:22, 14:5 worksheets [1] - 149:24 workstations [1] - 71:7 worried [1] - 168:6	Z Zelle [4] - 60:6, 60:7, 60:8, 60:9 Zoom [4] - 153:12, 153:17, 154:16, 154:18